(22,202)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 305.

ANNIE LAPINA, PETITIONER,

vs.

WILLIAM WILLIAMS, COMMISSIONER OF IMMIGRATION.

WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

Judd & Detweiler (Inc.), Printers, Washington, D. C., March 5, 1912.

2 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA ex Rel. SAMUEL HOFFMAN
vs.
WILLIAM WILLIAMS, Commissioner of Immigration.

To the Justices of the United States Circuit Court of Appeals for the Second Circuit:

Annie Palina, alias Annie Lapina, hereby applies for the allowance of an appeal to the United States Circuit Court of Appeals, for the Second Circuit, from the order dismissing the writ of habeas corpus and certiorari entered herein on the 6th day of November, 1909.

Dated November 6th, 1909.

SAMUEL HOFFMAN,
ARCHIBALD PALMER,
Attorneys and Counsel for Defendant Appellant.

The foregoing application is granted and appeal allowed. Said appeal to act as supersedeas.

Dated, New York, November 22nd, 1909.

LEARNED HAND,
— *U. S. Circuit Court.*

(Endorsed:) Notice of Appeal, Allowance of Appeal and Supersedeas.—Service Admitted, Henry A. Wise, Nov. 22, 1909, Att'y for Respondent.—Filed.—U. S. District Court, S. D. N. Y., Nov. 23, 1909.

3 United States District Court, Southern District of New York.

UNITED STATES OF AMERICA ex Rel. SAMUEL HOFFMAN
vs.
WILLIAM WILLIAMS, Commissioner of Immigration.

The defendant, Annie Palina, alias Annie Lapina, on her appeal from the order herein dismissing the writs of habeas corpus and certiorari entered herein November 22nd, 1909, in the office of the Clerk of the United States District Court, Southern District of New York, alleging and complains:

That the order appealed from is illegal, irregular and erroneous, and for each and all of the following reasons:

1. That the Learned Judge of the said District Court erred in holding that there was any evidence at all adduced (on said writs of habeas corpus and certiorari), that said Annie Palina, alias Annie Lapina, was an immigrant such as contemplate- by the act entitled To Regulate Immigration of Aliens, in the United States, and being Chapter 1134 of the United States Statute at Large.

2. That said Annie Palina, alias Annie Lapina, was a domicile

resident of the United States for a period of thirteen years and the Act of Congress hereinbefore referred to could not be ex post facto in character and retroactive in force and effect, and that
4 this Court has erred in holding the said absence from the jurisdiction of the United States, without intent to leave said jurisdiction, makes the said Annie Palina, alias Annie Lapina, amendable to any Act of these United States regarding aliens who have not resided here for a period of three years in extent.

3. That the Act of Congress hereinbefore referred to in its intent and purposes and its language contemplate a distinction that is intended to be drawn between an alien and an immigrant, and that the Act of Congress refers only to immigrants, and not to aliens.

4. That the Act of Congress herein referred to and being an act known as An Act to Regulate Immigration of Aliens in the United States, and being Chapter 84, in the United States — at Large, is unconstitutional.

5. That the Act of Congress herein referred to refers to immigrants and not to aliens.

SAMUEL HOFFMAN,
ARCHIBALD PALMER,
Attorneys and Counsel for Defendant Appellant.

(Endorsed:) Assignment of Errors.—Service Admitted Nov. 22, 1907, Henry A. Wise, Att'y for Respondent.—Filed Nov. 23, 1907, U. S. D. C., S. D. N. Y.

5 *Hab. Corpus to Bring up Person.*

The President of the United States of America to William Williams, Commissioner of Immigration for the Port of New York, His Aids, Assistants or Whomsoever has the Custody of the Body of Annie Palina, alias Annie Lapina, Greeting:

We command you, that you have the body of Annie Palina alias Annie Lapina, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatever name she shall be called or charged before Hon. Learned Hand, a United States District Judge for the Southern District of New York, sitting or presiding in the United States District Court, at his Chambers, in the Post Office Building, Borough of Manhattan, City of New York, on the 28th day of October, 1909, at 10:30 o'clock in the forenoon of said day, to do and receive what shall then and there be considered concerning her and have you then there this writ.

Witness, George C. Holt, Judge of the United States District Court the 7th day of October, one thousand nine hundred and nine.

By the Clerk: THOMAS ALEXANDER.

SAMUEL HOFFMAN,
Attorney, 220 Bway., N. Y. City.

(Endorsed:) Within writ is hereby allowed.—Dated, N. Y., Oct. 27, 1909.—Geo. C. Holt, U. S. Dist. Judge, Southern Dist., N. Y.—Filed Dec. 7/09.

6 To the Honorable George C. Holt, Judge of the United States District Court for the Southern District of New York:

The petition of Samuel Hoffman, shows that one Annie Palina, alias Annie Lapina, is now in custody within the Southern District of New York, on Ellis Island, and is unlawfully imprisoned, detained and restrained within said district of her liberty by one William Williams, Commissioner of Immigration of the Port of New York, and is prevented by said William Williams, said Commissioner, from leaving said Ellis Island and entering the City of New York.

That said Annie Palina, alias Annie Lapina, is not committed or detained by virtue of any process or mandate issued by any Court of the United States, or by any Judge therefrom, nor is she committed or detained by virtue of the final judgment or decree of a competent tribunal of civil or criminal jurisdiction or the final judgment or order of such tribunal made in a special proceeding instituted for any cause except to punish her for contempt, nor by virtue of an execution upon such a judgment, decree or final order. The cause or pretense of the imprisoned or restrained according to the best of the knowledge and belief of your petitioner is as follows:

That the said Annie Palina, alias Annie Lapina, was arrested on a warrant issued by the Secretary of Commerce and Labor and directed to the Federal authorities at Tucson, Arizona, upon the ground that the said Annie Palina, alias Annie Lapina, was a member of the excluded class prior to her arrival in these United States of America which was some thirteen years ago.

That said petitioner, Annie Palina, alias Annie Lapina, has not been accorded her rights under the constitution of the United States and was refused due process of law upon such hear-
7 ing and each of them and proper opportunity to present evidence.

That petitioner was denied the right of counsel before the Board of Special Inquiry at Tucson, Arizona.

That said Annie Palina, alias Annie Lapina, could not have been a member of the excluded class at the time of her entry into these United States because she was then only twelve years of age. That the said Annie Palina, alias Annie Lapina, has been a resident of these United States and entitled to her domicile rights by reason thereof for a period of upwards of thirteen years and has never left the United States excepting in June, 1908, when she went to Europe for the sole purpose of bringing her mother to this country, a period of absence which lasted no longer than about six weeks.

That at said Tucson, Arizona, without due process of law and by force and intimidation *of* the said Annie Palina, alias Annie Lapina, was examined by persons who claimed to be acting under

due process of law, but under what process they acted they did not inform the said Annie Palina, alias Annie Lapina.

That thereupon the report of said inquiry was duly forwarded to the Department of Commerce and Labor and thereafter the Secretary of Commerce and Labor issued a warrant of deportation to Hon. William Williams, Commissioner of Immigration of the Port of New York, and under said warrant said Annie Palina, alias Annie Lapina, was removed from Tucson, Arizona, to Ellis Island, New York, where she now is.

That the said Hon. William Williams has ordered that the said Annie Palina, alias Annie Lapina, be deported on Saturday October 30th, 1909.

That a personal appeal from the order of deportation was
8 made to the Secretary of Commerce & Labor at Washington, D. C., by your deponent, but contrary to the fact that there is no right under law to deport said Annie Palina, alias Annie Lapina, the said Secretary of Commerce and Labor has refused to grant permission to said Annie Palina, alias Annie Lapina, to leave Ellis Island.

That the determination adverse to said Annie Palina, alias Annie Lapina, has been based upon no law, and is without right or authority and said Annie Palina, alias Annie Lapina, was ordered deported upon insufficient evidence and contrary to law.

Wherefore your petitioner prays that a writ of habeas corpus issue directed to the said William Williams, Commissioner of Immigration of the Port of New York, commanding him to produce the body of Annie Palina, alias Annie Lapina, before a United States District Judge, for the Southern District of New York, and that a writ of certiorari issue to the said William Williams, commanding him to produce the papers and proceedings in said matter of the deportation of Annie Palina, alias Annie Lapina, at the same time before the said United States District Court and your petitioner will ever pray, etc.

Dated New York, Oct. 26th, 1909.

SAMUEL HOFFMAN,
Petitioner.

ARCHIBALD PALMER,
SAMUEL HOFFMAN,
Attorneys for Petitioner,
320 *Broadway, N. Y. City.*

UNITED STATES OF AMERICA,
Southern District of New York.

Samuel Hoffman, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition subscribed
9 by him; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

SAMUEL HOFFMAN.

Sworn to before me this 26th day of October, 1909.

JACOB H. MATFUR,
Notary Public, N. Y. Co.

(Endorsed:) Petition for Writ of Habeas Corpus and Certiorari.—Filed U. S. D. C., S. D., N. Y., Oct. 27, 1909.

United States District Court, Southern District of New York.

UNITED STATES ex Rel. SAMUEL HOFFMAN, Petition- for ANNIE PALINA, alias ANNIE LAPINA,

vs.

WILLIAM WILLIAMS.

Return of Writ of Habeas Corpus.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

William Williams, being duly sworn deposes and says: That he is a United States Commissioner of Immigration at the Port of New York; that Annie Palina, alias Annie Lapina, the relator herein, is in the custody of this deponent awaiting deportation under and by virtue of a certain warrant of deportation duly issued on the 11th day of October, 1909, by Ormsby McHarg, Acting Secretary of Commerce and Labor. That annexed hereto and made part hereof and marked "Exhibit A" is a true copy of the said warrant of deportation.

Upon information and belief, that this petition shows that the relator herein was taken into custody by Chas. F. Connell, a duly appointed and acting United States Inspector of Immigration at Phœnix, Arizona, on the 22nd day of September, 1909, under and by virtue of a certain warrant of arrest duly issued on the said date by Ormsby McHarg, Acting Secretary of Commerce and Labor, upon the ground that said relator who entered the United States at the Port of New York, on or about June 1st, 1909, was an alien in violation of the Act of Congress approved February 20th, 1907, in that she was a prostitute and had entered the United States for the purpose of prostitution and had been found practicing within three years after her arrival in the United States; that the said warrant of arrest commanded the said Charles T. Connell to take the said alien into custody, and to bring her before himself to enable her to show cause why she should not be deported in conformity *by* law; that she was given a hearing at Tuscon, Arizona, on the 23rd day of September, 1909, and at which time the said warrant of arrest was read to her and the nature of the proceedings taken thereunder was duly explained to her and she was duly advised of her right to be represented at the said hearing by counsel and that having been so advised she expressly waived her right to be represented by counsel and stated that she desired to proceed without counsel. That the said Chas. T. Connell then duly proceeded to take evidence touching and concerning her right to be and remain in the United

States; that at the said hearing the said relator was duly accorded all her rights, and was granted full and proper opportunity to present evidence on her own behalf; that at the said hearing
11 all things were done in an orderly and proper manner and in conformity to law; and that no force or intimidation of any kind whatsoever was used against the said alien, as alleged in the petition filed herein; that the facts adduced at the said hearing was in substance and effect as follows: That the said Annie Palina alias Annie Lapina, alias Annie Feury, alias Annie Klock, alias Mrs. Joseph Fiore, was born in Russia and came to the United States in the year 1897 or 1898, and that she came to the United States at that time accompanied by a man named George, who had promised to marry her, and during the four years immediately following her said entry she practiced prostitution in the City of New York, and lived with the said George, whom she supported with proceeds of her prostitution; that she then left the City of New York, and thereafter continuously practiced prostitution in various parts of the United States including Walla Walla, Washington, Jerome, Phœnix and Prescott, Arizona, El Paso, Texas, and other places; that in the month of March, 1908, she returned to Europe for the purpose of visiting her mother, intending at some time to return to the United States; that she re-entered the United States at the Port of New York on the 2nd day of June, 1908, per the S. S. "Finland," accompanied by her mother, at which time the said relator falsely represented for the purpose of facilitating her landing that she was Mrs. Joseph Fiore and the wife of an American citizen; that at the time of her second entry she intended to continue the practice of prostitution in the United States, and almost immediately upon her admission she engaged in the said practice and was continually engaged therein until the said 21st day of September, 1909, on which date she was arrested in a house of prostitution in Phœnix, Arizona, in the manner aforesaid;
12 that the said relator is unmarried and has never acquired American citizenship by naturalization.

That a written record and report of the said hearing and of the evidence so adduced as aforesaid was duly submitted to the said Ormsby McHarg, Acting Secretary of Commerce and Labor, who, after due consideration of the said evidence, became and was satisfied from all the evidence that the said alien was in the United States in violation of the Act of Congress approved February 20, 1907, and was subject to deportation under the provisions of the said Act and of the laws of the United States, and duly issued said warrant of deportation in accordance with the provisions of the Immigration Act of February 20, 1907, and the statutes of the United States in such case made and provided.

That on the first day of October, 1909 before the said warrant of deportation was issued, Samuel Hoffman, the petitioner herein and the attorney for the said alien, appeared before Frank A. Learned, Assistant Commissioner General of Immigration at Washington, D. C., and was afforded an opportunity to present further evidence by affidavit and to submit an argument on behalf of the

tion for writ of habeas corpus and certiorari, assignment of errors, return to habeas corpus, order dismissing writ of habeas corpus and certiorari, and stipulation waiving certification, and the endorsements thereon, and that the said copies filed as the return
16 herein with the same force and effect as if they were returned duly certified by the Clerk of the United States Circuit Court, for the Second Circuit of New York.

Dated, December 3, 1909.

E. H. LACOMBE, *U. S. C. J.*

United States Circuit Court of Appeals, Second Circuit.

UNITED STATES ex Rel. SAMUEL HOFFMAN, Petitioner for ANNIE PALINA, alias ANNIE LAPINA,

vs.

WILLIAM WILLIAMS.

It is hereby stipulated and agreed between Samuel Hoffman, attorney for petitioner, above named, and Henry A. Wise, United States Attorney for the Southern District of New York, attorney for the respondent above named, that the case on appeal herein shall consist of the petition for writ of habeas corpus and certiorari the writ granted thereon, and the return to said writ, and the order dismissing said writ and further,

That certification of the said case on appeal is hereby waived.

SAMUEL HOFFMAN,
Attorney for Appellant.
HENRY A. WISE,
Attorney for Respondent.

(Endorsed:) Order and consent waiving certification, etc.—Filed U. S. Circuit Court of Appeals, Dec. 6, 1909.

17 United States Circuit Court of Appeals, Second Circuit.

In the Matter of Application of ANNIE LAPINA for Habeas Corpus, ANNIE LAPINA, Appellant.

Before Lacombe, Coxe, and Ward, Circuit Judges.

This cause comes here upon appeal from an order of the District Court, Southern District of New York, dismissing a writ of habeas corpus, sued out in behalf of Annie Palina, alias Lapina, because of her alleged restraint by the Commissioner of Immigration, who is about to deport her under Sec. 20 of Chapter 1134 of the Laws of 1907.

LACOMBE, *C. J.:*

The petitioner an unmarried woman, a native of Russia, came to this country in 1897 or 1898 at the age of twelve. She remained

here continuously living in various parts of the United States until March 1908 when she returned to Europe to go to the assistance of her mother who was then living at Kishineff, Russia. She reentered this country on June 2, 1908, by the S. S. "Finland" with her mother and for the purpose of facilitating her landing falsely represented that she was Mrs. Joseph Fiore and the wife of an American citizen. Prior to her leaving this country and
18 subsequent to her return thereto she was engaged in the occupation of a prostitute. On September 21, 1909, she was arrested in a house of prostitution in Phœnix, Arizona. The above facts being established an order of deportation was made under the Act of Feb. 20, 1907, it being held that as a prostitute she was within the excluded classes enumerated in Sec. 2. She obtained a writ of habeas corpus and after a hearing the writ was dismissed by the district court, Southern District of New York. From this order of dismissal appeal was taken.

The single question presented is whether the provisions of the Act of 1907 apply to an alien, who after original entry into this country has remained here more than three years and then, after a brief absence abroad, again seeks to enter the United States.

We had this question of construction of the Act of March 3, 1903 (which is in this particular substantially the same as the Act of 1907) before us in Taylor v. U. S. 152 F. R. 1, and do not think it necessary to repeat the long discussion which will be found in that opinion. We referred in that case to the history of the Act as disclosed in the Congressional Record. It therein appeared that the question, whether the new Act should, like the original one of March 3, 1891, be restricted to alien immigrants or should be broadened so as to cover aliens, whether immigrants or not, was thoroughly discussed in Congress. As the bill left the House it was broadly phrased; the Senate amended it in several particulars so as to restrict its operation to immigrants. Upon conference, however, the House non-concurred in these amendments and the Senate withdrew them. We held that these proceedings clearly indicate that Congress was satisfied that the use of the word "immigrant" had given rise to a construction of the earlier acts which rendered them inadequate to accomplish their purpose, and
19 made it necessary to adopt the broader term "alien". The Taylor case was reversed by the Supreme Court, 207 U. S. 120, the court holding that the facts did not warrant a conviction (under Sec. 18 of the Act) of the captain of a vessel from which one of the ship's crew had deserted while in this port; but we find nothing in the opinion of the Supreme Court which indicates that this court was in error in holding that, despite its title, the excluding sections of the Act applied to aliens generally and not solely to alien immigrants.

Examination of the cases cited by appellant—U. S. v. Buchsbaum, 141 F. R. 222, Rodgers v. Buchsbaum, 152 F. R. 355; In re Oto, 96 F. R. 487; U. S. v. Aultman Co., 143 F. R. 922; U. S. v. Nakashima, 160 F. R. 842, has not satisfied us that these later acts of 1903 and 1907 should be given the narrower construction

contended for. The construction approved in the Taylor case has been the one accepted in this circuit—In re Moses, 83 F. R. 906; In re Kleibs, 128 F. R. 656; Funaro v. Watchorn, 164 F. R. 153; Ex parte Crawford, 165 F. R. 330.

The order is affirmed.

20 Endorsed: United States Circuit Court of Appeals, Second Circuit. In the Matter of Application of Annie Lapina for Habeas Corpus, Annie Lapina, Appellant. Opinion. Lacombe, C. J. United States Circuit Court of Appeals, Second Circuit. Filed May 2, 1910. William Parkin, Clerk.

21 At a Stated Term of the United States Circuit Court of Appeals in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 12th day of May, one thousand nine hundred and ten.

Present:

Hon. E. Henry Lacombe,
Hon. Alfred C. Coxe,
Hon. Henry G. Ward,
Circuit Judges.

In the Matter of the Application of SAMUEL HOFFMAN, Petitioner for Annie Palina, alias Annie Lapina, for a Writ of Habeas Corpus; Annie Palina, alias Annie Lapina, Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said District Court be and it hereby is affirmed with costs.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

E. H. L.
A. C. C.

23 Endorsed: United States Circuit Court of Appeals, Second Circuit. In re Annie Palina alias Annie Lapina. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed May 16, 1910. William Parkin, Clerk.

23 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the fore-

going pages numbered from 1 to 22 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the Matter of Application of Samuel Hoffman, petitioner for Annie Palina, alias Annie Lapina, for a writ of Habeas Corpus, Annie Palina alias Annie Lapina, Appellant, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 16th day of May in the year of our Lord One Thousand Nine Hundred and ten and of the Independence of the said United States the One Hundred and thirty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

14 UNITED STATES OF AMERICA, ss:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Annie Lapina is appellant, and William Williams, Commissioner of Immigration, is appellee, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Southern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

15 Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable John M. Harlan, Senior Associate Justice of the Supreme Court of the United States, the 18th day of October, in the year of our Lord one thousand nine hundred and ten.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

16 [Endorsed:] File No. 22,202. Supreme Court of the United States. No. 581, October Terms, 1910. Annie Lapina vs. William Williams, Commissioner of Immigration. Writ of Certiorari. Filed Feb. 21, 1912. William Parkin, Clerk United States Circuit Court of Appeals, Second Circuit.

27 United States Circuit Court of Appeals, Second Circuit, October Term, 1911.

No. 305.

ANNIE LAPINA, Petitioner,
against
WILLIAM WILLIAMS, Commissioner of Immigration.

It is hereby stipulated by counsel for the parties to the above entitled case that the certified copy of the transcript of the record in the Circuit Court of Appeals for the Second Circuit, now on file in the Supreme Court of the United States may be taken as the return of the clerk of the Circuit Court of Appeals for the Second Circuit to the writ of certiorari herein.

Dated, New York, February 23rd, 1912.

ARCHIBALD PALMER,
Counsel for Petitioner.
HENRY A. WISE,
U. S. Attorney, Att'y for Respondent.

Endorsed: In re Annie Lapina. Stipulation. United States Circuit Court of Appeals, Second Circuit. Filed Mar. 1, 1912. William Parkin, Clerk.

28 To the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as a return to the writ of certiorari issued herein.

Dated, New York March 1st, 1912.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

29 United States Circuit Court of Appeals, Second Circuit, October Term, 1911.

No. 305.

ANNIE LAPINA, Petitioner,
against
WILLIAM WILLIAMS, Commissioner of Immigration.

It is hereby stipulated by counsel for the parties to the above entitled cause that the certified copy of the transcript of the record

in the Circuit Court of Appeals, for the Second Circuit, now on file in the Supreme Court of the United States may be taken as the return of the clerk of the Circuit Court of Appeals of the Second Circuit to the writ of certiorari herein.

Dated, New York, February 24, 1912.

ARCHIBALD PALMER,
Counsel for Petitioner.

W. R. HARR,
Solicitor for United States of America, Ass't Att'y Gen.

30 [Endorsed:] 305/22,202. United States Circuit Court of Appeals, Second Circuit. Annie Lapina v. William Williams. Return to Certiorari.

31 [Endorsed:] File No. 22,202. Supreme Court U. S., October Term, 1911. Term No. 305. Annie Lapina, Petitioner, vs. William Williams, Commissioner of Immigration. Writ of Certiorari and return. Filed March 4, 1912,

Supreme Court of the United States

OCTOBER TERM.

ANNIE LAPINA,
Petitioner,

AGAINST

WILLIAM WILLIAMS, Commissioner of Immigration,
Respondent.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner Annie Lapina respectfully represents that heretofore on or about the 22nd day of September, 1909, Phoenx in the State of Arizona, she was arrested by virtue of a warrant of arrest issued by Ormsby McHarg, Acting Secretary of the United States Department of Commerce and Labor, charging your petitioner with being a prostitute immigrant alien and had entered the United States of America for the purpose of prostitution, and that she had entered the said United States at the Port of New York, on or about the 1st day of June, 1908, and had been found practising prostitution within three years after her arrival in said United States and that your petitioner was an immigrant alien and sojourned in the said United States in violation of the Act of Congress approved February 20th, 1907.

That your petitioner at Tuzson in the State of Arizona was thereupon brought before persons calling themselves a Board of Special Inquiry and that at said Tuzson, Arizona, without due process of law, and by force and intimidation, your petitioner Annie Lapina was examined by persons who claimed to be acting under due process of law, but under what process they acted they did not inform your petitioner.

That thereafter your petitioner was removed from said

Tuzson, Arizona, to Ellis Island, in the State of New York, under an alleged warrant of deportation.

That on or about the 28th day of October, 1909, on writ of habeas corpus your petitioner, Annie Lapina, was brought before the Honorable Learned Hand, Judge of the United States District Court for the Southern District of New
5 York, on petition alleging that your petitioner, Annie Lapina, had been a resident of the Unted States, (and entitled to her rights as a resident by reason thereof) for a period of upwards of thirteen years and had during said thirteen years never left the said United States, excepting in March, 1908, when your petitioner went to Europe for the said purpose of bringing her mother to this country, a period of absence which lasted no longer than about eight weeks. That on your petitioner's original entry into the United States, thirteen years previously as aforesaid, she was not in any
6 excluded class, she being then only twelve years of age.

That your petitioner, Annie Lapina, was not, therefore, an immigrant alien, within the meaning of any statutes of the said United States of America, and could not lawfully be deported as an immigrant alien, by virtue of any provisions thereof.

That the said writ of habeas corpus was dismissed by the said Honorable Learned Hand, Judge of the United States District Court for the Southern District of New York aforesaid, and your petitioner, Annie Lapina, was remanded to the custody of the United States Commissioner of Immigration at the Port of New York.

7 That thereafter on the 22nd day of November, 1909, your petitioner, Annie Lapina, obtained from said Honorable Learned Hand, aforesaid, an allowance of an appeal to the United States Circuit Court of Appeals for the Second Circuit, said allowance of appeal to act as a supersedeas.

That thereafter on or about the 12th day of May, 1910, the said United States Circuit Court of Appeals affirmed the order of the said Honorable Learned Hand, as aforesaid, remanding your petitioner for deportation as aforesaid as an immigrant alien.

That on behalf of the said respondent Commissioner of
8 Immigration it was conceded on said appeal that your petitioner "was born in Russia and came to the United

"States in 1897 or 1898" and had continuously resided in the said United States until the month of March, 1908, a period of more than ten years continuous residence in said United States, and "that in the month of March, 1908, she returned to Europe "for the purpose of visiting her mother, intending at some time "to return to the United States." That this concession is made by the said Commissioner of Immigration in the return filed on his behalf, to petitioner's said writ of habeas
9 corpus, which said return is set out at page 11, folios 31 to 33 of the certified proceedings in said Circuit Court of Appeals annexed to this petition n conformity with the rules of the United States Supreme Court.

Your petitioner submits that on such conceded state of facts your petitioner cannot lawfully be adjudged an immigrant alien; for that your petitioner, although an alien, had resided in said United States, and that she left said United States *animo revertendi*, as is conceded by said respondent as aforesaid.

10 That the title of the Immigration Act of 1907 (Chapter 1134 of the Laws of 1907), under which the United States Government seeks to deport your petitioner, is "An Act to "Regulate the immigration of aliens into the United States." The Act of 1903 had identically the same title. And in both the Acts of 1903 and 1907 the descriptions, as to who are to be considered members of the excluded classes are almost identically alike both as to form and substance.

That under the Act of 1903, Mr. Justice Bradford, in Rodgers v. United States, ex rel. Buchsbaum, 152 Fed., 356,
11 said:

> "Had Congress contemplated such a radical departure from the policy embodied in the earlier statutes touching the importation of aliens as to provide for their exclusion, although not immigrant, but domiciled in this country, it is reasonable to assume that such intent in view of such abrupt change of policy would have been plainly expressed in the body of the Act, and also that a title other than "An Act to Regulate the Immigration of aliens into the United States,' would have been adopted."

And further on in the same case Mr. Justice Bradford held, among other things, as follows:

"The title is 'An Act to Regulate the Immigration of Aliens into the United States' * * ' It is well settled that when the language of a statute is ambiguous or otherwise doubtful, or being plain, a literal construction would lead to such absurdity, hardship or injustice as to render it irrational, to impute to the law-making power a purpose to produce or permit such result, the title may be resorted to as tending to throw light upon the legislative intent as to its scope and operation (U. S. v. Fisher, 2 Cranch, 350, 358)."

That here the language of the said Act of 1907 is, at the very least, ambiguous. And examining the said statute of 1907, it is apparent that the words "immigrant" and "alien" and "alien immigrant" are used indiscriminately throughout the 43 sections of the Act.

For reference therein is made to the "immigration of aliens" and to an "immigrant fund." For instance, Section 25 says:

"That such Board of Special Inquiry shall be appointed by the Commissioner of Immigration, at the various points of arrival as may be necessary for the prompt determination of all cases of *immigrants* detained at such ports, under the provisions of the law."

That in the very same section, but two lines on, "alien" is spoken of as an interchangeable term for immigrant. And Section 42 speaks of the accommodations to be made for "immigrant passengers."

That, moreover, in Rule 4 of the Rules made by the Board of Immgration it is said: "The provisions of the Immi-"gration Act do not apply to aliens who have once been "duly admitted to the United States." And in Rule 8 it is said "Alien residents returning from a temporary trip abroad, "and aliens residing abroad, coming to the United States for "a temporary trip shall be classed as non-immigrant aliens."

That construing the Act of 1903, (which is the same on the point at issue as the Act of 1907), it was held in United States v. Buchsbaum, 141 Fed., page 222, by Mr. Justice McPherson of the Eastern District of Pennsylvania, as follows:

"That an alien who has once become a resident is entitled to the same liberty of movement as enjoyed by resi-

dents and citizens alike and until he abandons his residence here he is no longer amenable to the excluding provisions of the immigration law. That law is intended to operate when the immigrant presents himself for the first time, but, after he has passed the scrutiny of the inspectors and has been admitted, he is then entitled to the rights and privileges of residents of the United States as long as he continues to be a member of this class. It is true that in one sense of the word he is always an alien until
16 he becomes a citizen, although he may reside in this country for many years before he applies to be naturalized. But this is not the sense in which the word has been used in the statute regulating immigration. In these statutes an alien immigrant is one who offers to take up his residence here, but has not yet carried out his desire. Such an immigrant must fulfill certain requirements or he will not be allowed to land, but, having been admitted and having once acquired a residence in good faith, he is not obliged to stay in the country until he becomes a citizen at the risk of being excluded when he returns to his family or his home. There are many commercial travelers of foreign birth who are still aliens. It is impossible to suppose that the Act of 1903 was intended to apply to such persons. But it does apply to them and to all other persons of foreign birth who have not been naturalized, no
17 matter how long they may have lived in the country, nor what their ties of business or family may be, if the construction contended for by the government be correct. I happen to know that a president of one of our most conspicuous institutions of learning retains his foreign citizenship for certain business reasons. He has been identified with the intellectual life of this country for two generations and he is widely known as a profound scholar, but he is an alien, and he must be inspected whenever he returns from a visit abroad, if the literal meaning of that word must prevail in every case."

If that was true as to the Act of 1903 it is equally true as to the Act of 1907.

That the Act of 1903 and the Act of 1907 are identically
18 the same as to the point in controversy.

That your petitioner further shows unto this Honorable

Court that on March 1st, 1909, the Secretary of Commerce and Labor, replying to the House of Representatives, took the same view as urged by your petitioner here. For in House of Representatives Document 1494 is a letter from him from which the following are excerpts (the parts omitted not being germane to the subject in controversy):

"Department of Commerce and Labor,
Office of the Secretary,
Washington, Feb. 25th, 1909.

SIR:

I have the honor to acknowledge the receipt of a resolution of the House of Representatives, dated February 22nd, 1909, reading as follows:

Resolved, That the Secretary of Commerce and Labor be requested to inform the House of Representatives as to the following matters:

(a) What number of aliens were admitted into the United States, during the fiscal year ending June 30th, 1908, under the allowed claim of theretofore acquired permanent domicile in the United States.

(b) What number of aliens so admitted would, but for such domicile, have been inadmissable.

* * * * * * *

With respect to paragraph (a) the records of the Bureau of Immigration and Naturalization of this Department show that during the fiscal year ending June 30, 1908, 14 aliens were allowed to enter this counlry solely because of a satisfactorily established claim of theretofore acquired permanent domicile; that during the same period 5 aliens were admitted upon a satisfactorily established claim of domicile, considered in conjunction with the fact that the mental or physical defect with which such aliens were suffering has been contracted during the former period of residence in this country; that in the cases of 13 aliens rejected as persons deemed by boards of special inquiry to be likely to become public charges an uncontroverted claim of former domicile was taken into consideration as one of the several important items of evidence regarded as sufficient to justify the department's order for the admission of the applicants, and that in the cases of 18 aliens detained at ports because thought to be inad-

missible as likely to become public charges or by reason of the issuance against them of certificates for physical afflictions not of a loathsome or dangerous contagious nature uncontroverted claim of former domicile was given consideration as one of several important items favoring the aliens on condition that a bond guaranteeing that they would not become a public charge should be submitted in accordance with Section 26 of the immigration act."

* * * * * * *

That your petitioner respectfully submits that the question upon the legal and just construction of the said Immigration Act of 1907, involved in and presented by the said case of your petitioner, should be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the Court of the merits of the said question on the part of the petitioner and the United States.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled "United States of America, ex rel. Samuel Hoffman, Petitioner, against William Williams, Commissioner of Immigration, Respondent," to the end that the said case may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress, entitled "An Act to establish Circuit Court of Appeals and "to define and regulate in certain cases the jurisdiction of "the Courts of the United States, and for other purposes," approved March 3rd, 1891, or that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and in conformity with the said Act, and that the said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioner will ever pray.

ANNIE LAPINA,
Petitioner.

I. Henry Harris,
Counsel.

STATE OF NEW YORK, }
County of New York, } ss.:

Annie Lapina, being duly sworn, deposes and says: That she is the petitioner herein. That she has read the annexed petition and that the statements therein contained are true.

ANNIE LAPINA.

Sworn to before be this 25th day of May, 1910.

WILLIAM WEISS,
Notary Public,
(Seal) New York County.

STATE OF NEW YORK, }
County of New York, } ss.:

I, Henry Harris, being duly sworn, deposes and says: He is counsel for Annie Lapina, the petitioner; that the foregoing petition was prepared under his supervision, and that the allegations are true as he verily believes after consultation and conference with the petitioner and her attorney in the Circuit Court of Appeals, Archibald Palmer, Esq.

I. HENRY HARRIS.

Subscribed and sworn to before me this 26th day of May, 1910.

WILLIAM WEISS,
Notary Public,
(Seal) New York County.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

ANNIE LAPINA, PETITIONER,
v.
WILLIAM WILLIAMS, COMMISSIONER OF IMMIGRATION. } No. 976.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

CONCURRENCE OF THE SOLICITOR-GENERAL.

The petitioner, an unmarried woman, was born in Russia of alien parents and came to the United States for the first time in 1897 or 1898, at the age of 12, accompanied by a man named George, who had promised to marry her. During the four years immediately following her entry into this country she practiced prostitution in the city of New York, supporting the man George with her earnings, but never marrying him. She then left New York and was continuously a prostitute in various cities throughout the United States until March, 1908, when she returned to Europe for the purpose of visiting her mother, intending at some time to return to this country (R., 11).

She reentered the United States at the port of New York on June 2, 1908, accompanied by her mother, and, for the purpose of facilitating her

landing, falsely represented that she was Mrs. Joseph Fiore and the wife of an American citizen. At the time of her second entry she intended to continue the practice of prostitution; and, beginning almost immediately after her admission, she did continue it until September 21, 1909, when she was arrested in a house of prostitution in Phoenix, Ariz. (R., 11).

The facts above stated being established, an order of deportation was issued by the Department of Commerce and Labor (R., 12) upon the ground that she was within the excluded classes of aliens enumerated in section 2 of the immigration act of February 20, 1907 (34 Stat., 898).

A writ of habeas corpus obtained in her behalf was dismissed by the District Court of the United States for the Southern District of New York. (R., 15.) This action was affirmed by the Circuit Court of Appeals for the Second Circuit.

As stated by the Circuit Court of Appeals in its opinion in this case, "the single question presented is whether the provisions of the act of 1907 apply to an alien who, after original entry into this country, has remained here more than three years, and then, after a brief absence abroad, again seeks to enter the United States."

Upon this question the lower courts seem hopelessly divided.

In this case the Circuit Court of Appeals, reaffirming its views expressed in the case of *Taylor* v. *United States* (152 Fed., 1), holds that, in view

of the various changes which Congress has made in the immigration statutes, an alien upon his second entry is as much subject to the provisions of the law as if he had never before been in this country. This construction of the present immigration act and the substantially similar provisions in this respect of the act of 1903 (32 Stat., 1213) has been adopted in various other cases arising in that circuit. (*In re Kleibs*, 128 Fed., 656 (Judge Lacombe); *United States ex rel. Funaro* v. *Watchorn*, 164 Fed., 152 (Judge Ward); *Ex parte Crawford*, 165 Fed., 830 (Judge Adams); *United States* v. *Villett*, 173 Fed., 500 (Judge Holt).) A like conclusion has been reached by district courts in the Fourth and Eighth circuits. (*Ex parte Petterson*, 166 Fed., 536; *United States ex rel. White* v. *Hook*, 166 Fed., 1007.)

Upon the other hand, the Circuit Courts of Appeals for the Third Circuit (*Rodgers* v. *United States*, 152 Fed., 346; 141 Fed., 222), the Sixth Circuit (*United States* v. *Aultman Company*, 148 Fed., 1022; 143 Fed., 922), and the Ninth Circuit (*United States* v. *Nakashima*, 160 Fed., 842) have taken a diametrically opposite view; holding that the immigration act is directed against alien immigrants and does not apply to alien residents.

The Department of Commerce and Labor, charged with the administration of the immigration laws, has been greatly embarrassed by this situation and desires the question definitively settled.

In view of the conflict of decision and the obvious importance of a determination of this question in the administration of the immigration laws, the petition is concurred in and the issuance of a writ of certiorari is respectfully urged.

LLOYD W. BOWERS,
Solicitor-General.

MAY, 1910.

O

In the Supreme Court of the United States,

OCTOBER TERM, 1911.

ANNIE LAPINA, Petitioner,

v.

WILLIAM WILLIAMS, Commissioner of Immigration.

No. 305.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF AND ARGUMENT FOR PETITIONER.

PRELIMINARY.

The petition (No. 976) to this Court for writ of certiorari (which was granted on 18th day of October, 1910), was concurred in, and the issuance of the writ urged, by the late Solicitor General (Hon. Lloyd W. Bowers) in his Concurring Memorandum filed May 31, 1910.

As concurred in by the then Solicitor General and as stated in the petition to this Court for said certiorari, the single question presented herein is

whether the provisions of the Immigration Act of 1907 (Chap. 1134 of the Laws of 1907) apply to an alien who, after original entry into this country at the age of twelve years (R., 4 and 11), had remained here uninterruptedly for more than three years, to wit: thirteen years; and then, after a six weeks' absence abroad (R., 4), again sought to enter the United States on the theory that she was a resident alien domiciled here, after thirteen years' continuous residence (R., 4 and 11), and left this country *animo revertendi*, She went to Kishineff, Russia, to the assistance of her mother (R., 4 and 11—judgment of Mr. Justice Lacombe), and brought her to this country, * * * after about six weeks' absence.

Upon this question—as the late Solicitor General said in his Concurrence—"the lower Courts seem hopelessly divided."

This Court, per Mr. Justice Holmes, in the seaman case (U. S. v. Taylor, 207 U. S., 120), said:

> "The reason for the construction adopted below was found in the omission of the word 'immigrant' which had followed the word 'alien' in the earlier acts."

As a matter of fact, the word 'immigrant' (following the word 'alien') did **not** occur in the Immigration Acts of 1875, 1882, 1884, 1885, 1887; nor in the excluding section of 1891 Act,—Section 1. "Alien" was the word used all through those earlier Acts,—it was used everywhere in the 1891 Act; except in the section as to manifesting (Section 8), where—for the very first time in any Immigration Act—occur the words "alien immigrants." (See Point I.)

This Court continued, in the Taylor case:

> "No doubt that might have been intended to widen the reach of the statute,—but we see

no reason to suppose that the omission meant to do more than to *avoid* the suggestion that no one was within the Act who did *not* come here with intent to remain." (Italics mine.)

That is precisely the contention of the petitioner in the case at bar.

ARGUMENT.

The argument which follows is:

I. The Court below erred in holding that petitioner was within scope of Immigration Act 1907. p. 7

II. The majority of Circuit Courts of Appeal are in petitioner's favor. Decisions of divergent Circuit Courts of Appeal considered. " 12

III. Petitioner in the eye of the law was a domiciled alien resident, and, therefore, not within the scope of the Immigration Act of 1907. " 24

IV. The words "alien" and "aliens" as used in the immigration statutes prior to 1903 and 1907, were both construed uniformly by Federal Courts as referring to immigrants exclusively. " 30

V. The use of the word "aliens" in Acts of 1903 and 1907, instead of "alien immigrants" does not indicate intention of Congress to make Laws of 1903 and 1907 apply to case at bar. (See Congressional history hereunder given.) " 32

VI. Government's present contention is negatived by Statistical Rules issued by Government Department. " 53

VII. Government's present contention not recognized by Secretary of Commerce and Labor at the time 1907 Act was enacted,—and long afterward. Government's own written response to Congress proves this. " 53

h. 57

VIII. That "alien" and "aliens" and "passengers" had been used in four previous immigration Acts as meaning "immigrant."

STATEMENT.

On October 26th, 1909, Samuel Hoffman, one of the attorneys for the present petitioner, Annie Lapina, filed in the United States District Court for the Southern District of New York, a petition praying for a writ of *habeas corpus* directed to the Commissioner of Immigration at the port of New York, and also for a writ of *certiorari* to bring up the record of the board of inquiry which adjudged her to be a prostitute prior to her arrival in the United States contrary to the immigration laws. The petition in substance alleges (p. 4):

> That said Annie Lapina was arrested on a warrant issued by the Secretary of Commerce and Labor and directed to the Federal authorities at Tucson, Arizona, conveyed to the immigration station at Ellis Island, and there imprisoned by the Commissioner.
>
> That said Annie Lapina was denied the right of counsel before the Board of Special Inquiry at said Tucson, Arizona. That said Annie Lapina could not have been a prostitute at the time of her entry into this country because she was then only twelve years of age. That the said Annie Lapina had been a resident of the United States and entitled to her domicile rights by reason thereof for a period of upwards of thirteen years and had never left the United States excepting in June, 1908, when she went to Europe for the sole purpose of bringing her mother to this country, a period of absence which lasted no longer than about six weeks.
>
> That at said Tuscon, Arizona, without due process of law and by force and intimidation, said Annie Lapina was examined by persons who claimed to be acting under due process of

law, but under what process they acted they did not inform said Annie Lapina. That thereupon the report of said inquiry was duly forwarded to the Department of Commerce and Labor, and that thereafter the Secretary of Commerce and Labor issued a warrant of deportation to said Commissioner of Immigration at New York. That the determination adverse to said Annie Lapina was based on no law, and is without right or authority, and said Annie Lapina was ordered deported upon insufficient evidence and contrary to law. That by reason of the above facts, relator says the imprisonment and deportation of said Annie Lapina is illegal,—that said Annie Lapina "has not been accorded her rights under the constitution of the United States, and was refused due process of law upon such hearing and each of them and proper opportunity to present evidence."

William Williams, the said Commissioner of Immigration, made return under oath showing the reason for detention of said Annie Lapina. From this Return it appears (R. 6):

> That he is the United States Commissioner of Immigration at the port of New York. That said Annie Lapina was arrested at Phoenix, Arizona, on September 22nd, 1909, on a warrant issued by the Secretary of Commerce and Labor, upon the ground that said Annie Lapina, who entered the United States at the port of New York on June 1st, 1909, was an alien in violation of the Immigration Law of 1907, in that she was a prostitute and entered this country for the purpose of prostitution, and had been found practicing within three years after her arrival in the United States.

That a hearing had been accorded the said Annie Lapina at said Tucson, Arizona; that at said hearing all things were done orderly and in a proper manner.

"That the facts adduced at said hearing were in substance as follows: That the said Annie Lapina alias Annie Feury, alias Annie Klock, alias Mrs. Joseph Fiore, was born in Russia and came to the United States in 1897 or 1898, and that she came to the United States accompanied by a man named George, who had promised to marry her * * *.

"That in the month of March, 1908, she returned to Europe for the purpose of visiting her mother, intending at some time to return to the United States; that she re-entered the United States at the port of New York on 2nd June, 1908, per S. S. Finland, accompanied by her mother, at which time the said relator falsely represented for the facilitating her landing that she was Mrs. Joseph Fiore and the wife of an American citizen. * * *

"That the said Annie Lapina is unmarried and has never acquired American citizenship by naturalization." (R. 7.)

That upon a hearing on said writ of habeas corpus, before Hon. Learned Hand. D. J., the said writ was dismissed and said Annie Lapina remanded to the custody of the said Immigration Commissioner (R. 9).

Whereupon said Annie Lapina applied for an allowance of appeal to the United States Circuit Court of Appeals, Second Circuit, and same was granted (R. 2). That appellant assigned error in that the said District Judge (1) "erred in holding "that there was any evidence at all adduced that "said Annie Lapina was an immigrant such as "contemplated" by Chapter 1134 of the United States Statutes at Large. (Immigration Act, 1907.) (2) That said Annie Lapina was a domiciled resident of the United States for a period of 13 years, and that said District Judge erred in holding that said absence, with intent to return, makes said Lapina amenable to the provisions of said Act (R. 3).

That said Circuit Court of Appeals affirmed the order of the said District Judge Hand, in an opinion R. 10).

I.

The Court below erred in holding that petitioner, Annie Lapina, came within the scope of the Immigration Act of 1907.

The Court below (R., 11) said:

> "We had this question of construction of the Act of March 3, 1903 (which is in this particular substantially the same as the Act of 1907), before us in *Taylor v. U. S.*, 152 F. R., 1, and do not think it necessary to repeat the long discussion which will be found in that opinion."

Turning to the decision of the Court below in the *Taylor* case, 152 Fed., 1, we find these words:

> "Alien immigrant is a less comprehensive term than alien, and when it is deliberately discarded for the broader term, the *change* is highly significant. * * * Significantly also the Act refers, in Section 2, to the admission, not the immigration, of the excluded classes of aliens. * * *"

We turn to the previous Immigration Statute of 1891,—to the very section which preceded section 2 of 1903 and 1907,—which section 1 of 1891 Act began thus:

> "That the following classes of *aliens* shall be excluded from *admission* into the United States in accordance with the existing acts regulating immigration, other than those concerning Chinese laborers: all idiots," etc.

What becomes of Judge Lacombe's distinction? It is true the clause "in accordance with the existing acts regulating immigration other than "those concerning Chinese laborers" was omitted, but, as was pointed out by Judge Bradley, in the Circuit Court of Appeals for the Ninth Circuit in 1908 (*U. S. v. Nakashima*, 160 Fed. at page 845):

> "the omission of that clause does not seem to us of significance as indicating a change of policy, for the Act of 1903 contains in itself full legislation on the subject with which it deals, and there was no occasion to refer to existing acts regulating immigration."

Judge Lacombe then proceeded, in the *Taylor* decision to which he refers (R., 11), to point to examples of the use of the word "alien" exclusively in the 1903 Act. But I can point to the similar use of the word "alien" in immigration statutes so far back as 1875, 1885 and 1891. In 1875 Immigration Act in Section 5 it is provided that it shall be unlawful, without the Collector's permission, "*for any alien* to leave any such ves- "sel arriving," etc., until inspection shall have been had; "and at no time thereafter "shall *any* "*alien* certified to by the inspecting officer as be- "ing of either of the classes whose immigration "is forbidden by this section, be allowed to land "in the United States, *except in obedience to ju- "dicial process issued pursuant to law*," etc.

In the "Act to regulate immigration," 1882, in section 2 it is provided: "And it shall be the duty "of such State commission, board or officers so "designated to examine into the condition of *pas- "sengers* arriving at the ports within such State "in any ship or vessel," and if "*among such pas- "sengers* any convict, lunatic, idiot, or any person "unable to take care of himself without becoming "a public charge," such person shall not be permitted to land.

In 1885—Alien Contract Labor Law—Section 4 provided that shipmaster who shall knowingly bring within the United States on any vessel and land or permit to land * * * "any *alien* la- "borer, mechanic or artisan who," etc., "shall be "guilty of misdemeanor."

In 1891 Immigration Act, Section 6 punished any person bringing into U. S. "*any alien* not "lawfully entitled to enter." Section 8 laid it down that "all decisions made by the inspection "officers touching the right of *any alien* to land, "when adverse to such right, shall be final" unless appeal be taken to Superintendent of Immigration and Secretary of Treasury. Section 10 said that "*all aliens* who may unlawfully come "into U. S." shall be sent back on same vessel by which they came, if possible. Section 11 provided that "*any alien* who shall come into U. S. "in violation of law may be returned as by law "provided at any time within one year there- "after," etc., "*any alien* who becomes a public "charge within one year after his arrival in U. S. "from causes existing prior to landing shall be "deemed to have come in violation of law and "shall be returned as aforesaid."

It will therefore be seen that the theory of the Court below is erroneous.

Mr. Justice Lacombe, in his judgment in the Court below said (R., 11):

> "As the bill left the House it was broadly phrased. The Senate amended it in several particulars so as to restrict its operation to immigrants. Upon conference, however, the House non-concurred in these amendments, and the Senate withdrew them. We hold that these proceedings clearly indicate that Congress was satisfied that the use of the words 'immigrant alien' had given rise to a construction which rendered them inadequate to

accomplish their purpose, and made it necessary to adopt the broader term 'alien.' "

Mr. Justice Lacombe totally misapprehended the then situation in Congress, as the Congressional Record abundantly shows. This is shown in Point V hereof.

Two of the Second Circuit District Court decisions mentioned by the Court below (R 12) are manifestly inapplicable:—the Moses case decided in 1897; and the Kleibs case in 1904—where Kleibs is shown to have remained here less than a year on the first occasion and therefore the time limit for deportation had not yet run.

Mr. Justice Lacombe said that the Senate had amended the Bill so as to restrict its operation to immigrants, and that upon conference the Senate withdrew them. But if we look at pages 402, 403, 404, 405, 410, 450, 466 of Senate Document 62, 57th Congress, 1st session Vol. 6, Senate Documents Serial Number 4421) we find the situation to be as follows (and which shows a very different reason from that given by the Court below): It was a question of head tax. In Section 1, the House Bill had simply followed the wording of Section 1 of the Act of 1882: "That there shall be levied, collected and "paid a duty of fifty cents upon each and every "*passenger not a citizen of the United States.*" etc. (That 1882 Act did not except Canadians and Mexicans, as the 1903 and 1907 Act does. An amendment in 1884 did that.)

The Senate had struck out the words "passen- "ger not a citizen," etc., and inserted "alien im- "migrant." Whereupon Mr. Richard K. Campbell, of the Bureau of Immigration,—as well as Representative Shattuc, in charge of the Bill in the House,—insisted that "the Act of 1882 had "stood the test of years of application;"—that

if the Senate insisted on its amendment, "every "alien will profess that he is simply coming here "for a visit, *in which case we could not collect "a head-tax of any sort on account of him.*"

We do *not* find the words alien immigrant in the *earlier* Acts. They did *not* occur in Acts of 1875, 1882, 1884, 1885, 1887. Nor in the *excluding* section of the Act of 1891,—Section 1;—in Section 3 it is "alien," in Section 4, "alien"; Section 6, "alien"; Section 10, "alien"; Section 11, "alien." But in Section 8, in regard to manifesting, there—for the very first time,—occur the words "alien "immigrants." Now, in the Act of 1893 ("to "facilitate the enforcement," etc.), the draftsman did a *new* thing,—he made every section apply to "alien immigrants." Whereupon in course of time, to wit: on May 8th, 1899, there arose trouble because passengers objected to be examined;—and because an examination did thereby "delay, impede or annoy passengers in ordinary "travel," contrary to the provisions of Section 8 of the Act of 1891 in that behalf. Attorney General Griggs delivered an opinion holding that "alien immigrants" did not refer to alien visitors merely. This opinion is set out at length in the Appendix to this brief.

It was objected before that Senate Committee—by Senator Foraker and others—that the words "alien immigrant" were absolutely necessary, otherwise Congress would break the most-favored-nation clause, which is in all our treaties, by excluding Canada and Mexico from the Act. But it was replied that the alien did not pay the tax,—the transportation companies paid it. Again, it was pointed out that if an alien who had lived in Canada for one year (as it is provided in Section 1 of the 1907 Act) "the consequence will be that "when an alien came from Canada he would es-

"cape the operation of the law * * * he might "live *here* four years and go back to Canada on "some business, and when he attempted to re-"enter again he would have to pay the head-tax "again * * *. *In other words, we would dis-"criminate against aliens who lived in this coun-"try for any number of years.* He might have "lived here twenty years without having become "a citizen. * * *

"Senator Fairbanks: It would *not* affect him "unless he went to Canada for the purpose of "gaining a *permanent* residence there."

This is shown at large in Point V hereof.

It is plain, therefore, that the Court below was in error.

II.

The majority of the Circuit Courts of Appeal are in petitioner's favor,—four as against two.

Decisions of the Divergent Circuit Courts of Appeal Considered.

The diverse decisions of the Circuit Courts of Appeal are as follows:

Against petitioner's contention:

Second Circuit: The case at bar, sub nom. *ex parte Hoffman*, 179 Fed., 839, and *Taylor v. U. S.*, 152 Fed., 1—(alien seaman's case reversed by this Court, 207 U. S., 120).

Fourth Circuit: *U. S. v. Sprung*, 187 Fed., 905 (dissenting Circuit Judge Pritchard, in favor of petitioner's contention). Although that was not so strong a case as petitioner's.

In favor of petitioner's contention:

THIRD CIRCUIT: *Rodgers v. U. S.*, 152 Fed., 346—and another case, 191 Fed., 979.

~~FOURTH~~ CIRCUIT: *Redfern v. Halpert*, 186 Fed., 151.

SIXTH CIRCUIT: *U. S. v. Aultman*, 148 Fed., 1022.

NINTH CIRCUIT: *U. S. v. Nakashima*, 160 Fed., 842.

Taking the four C. C. A. in favor of petitioner's contention:

Rodgers-Buschbaum (3rd Circuit) had resided in U. S. four years; returned to native country for four months. (The 3rd Circuit last December—1911—adhered to Rodgers-Buschbaum decision—see U. S. ex rel. Barlin, 191 Fed., 979.)

Nakashima (9th Circuit), had been here two years, and then went to native country for two years.

In the Aultman case (6th Circuit) Herman had been here from Germany 15 years and went to Canada for two weeks.

The most recent C. C. A. case decided—March, 1911—the 5th Circuit, in Redfern v. Halpert, 186 Fed., 151 (*in a case nearer, than any other reported case, to the facts in case at bar*)—has agreed with present counsel's contention. That was a case of a girl similarly situated, both over ten years' residence, came here as little children, and in unfortunate experience *after* entering this country.

District Court cases referred to in late Solicitor General's said Concurring Memorandum herein; re *Petterson*, 166 Fed., 536; *White*, 166 Fed., 1007,

and *Vilett* cases are clearly distinguishable from case at bar.

As to the other District and Circuit Court cases mentioned by late Solicitor General, all in Second Circuit, *Kleibs*, 128 Fed., 656 (Judge Lacombe, 1904) had previously visited U. S., *stayed only four months* and bought a farm and stayed away *three years*. This alien was within the statutory one year limit for deportation. *Funaro*, 164 Fed., 152 (Judge Ward, 1908), had lived in U. S., at Pittsburgh, and had established domicile there, and was absent in Italy five months. *Crawford*, woman, 165 Fed., 830 (Judge Adams), followed Judge Ward. These Second Circuit cases were never appealed to C. C. A. although Judges allowed time to do so in each instance.

Taking the two C. C. A. against petitioner (*Second* and *Fourth* Circuits): I will show hereunder that the decisions are based entirely on false premises.

The Decisions of the Divergent Circuit Courts of Appeal Considered.

In Petitioner's Favor:

In February, 1907, the Third Circuit Court of Appeals in *Rodgers v. U. S. ex rel. Buchsbaum*, 152 Fed., 346, the Court, considering the 1903 Act, at page 350 said:

> The title is "An Act to regulate the immigration of aliens into the United States." Certainly if taken alone, it would indicate the inapplicability of the act to the case of Buchsbaum. It is well settled that, where the language of a statute is ambiguous or otherwise doubtful, or, being plain, a literal construction would lead to such absurdity, hardship or injustice, as to render it irrational to impute to the law making power a purpose to produce or permit such result the title may

be resorted to as tending to throw light upon the legislative intent as to its scope and operation * * *. Further, the body of the act contains provisions of such a character as, in connection with the title, to lead us to conclude that the statute was not intended to apply to aliens having their homes in the United States * * *.

At page 351:

To apply these and other provisions in the act, solely on account of temporary absence from the United States on business or pleasure, to aliens domiciled in this country, many of whom have here had their homes and families for years, carried on business and acquired wealth and distinction, and have while here received quality with citizens protection of person and property, would, we think, not only create repugnancy between the body of the act and its title, but require a harshness of construction or interpretation never contemplated by Congress. A review of some of the earlier statutes and decisions touching the immigration or importation into this country of aliens other than Chinese will throw much light on the subject under consideration. We say "other than Chinese" because cases arising under the Chinese exclusion acts are *sui generis*, involving the judicial or administrative enforcement of a particular policy on the part of the United States having as its object the prevention of competition between Chinese labor and other labor in this country. There, contrary to the general rules of evidence, prima facie presumptions are indulged against the Chinaman, and it may be that the principle of statutory construction properly may be applied to the Chinese exclusion acts in a manner somewhat different from that in which they are applicable to the act of March 3, 1903, and other statutes in *pari materia*.

* * * * * * * * *

Page 355:

> Had Congress contemplated such a radical departure from the policy embodied in the earlier statutes touching importation of aliens as to provide for their exclusion although not immigrant, but domiciled in this country, it is reasonable to assume that such intent, in view of such abrupt change of policy, would have been plainly expressed in the body of the act, and also that a title other than "An Act to regulate the immigration of aliens into the United States" would have been adopted.
>
> * * * * * * * *

The Third Circuit then decided that there was no statutory change made in the 1903 Act making the *Panzara* (57 Fed., 275—Judge Benedict), the *Maiola* (67 Fed., 114—Judge Lacombe), and *Moffit* (128 Fed., 375)—9th Circuit Court of Appeals—cases inapplicable.

The Third Circuit has recently, December, 1911, in *U. S. ex rel. Barlin v. Rodgers*, 191 Fed., at page 979 (at end of decision), adhered to their previous opinion.

The *Fifth* Circuit, in March, 1911, in a case where the conditions were very similar to case at bar;—*Redfern v. Halpert*, decided March, 1911, 186 Fed., 150,—decided in favor of the alien. The relator, Lena Halpert, aged 23 years, came to this country from Russia when she was 13 years of age—(Annie Lapina was 12 years of age)—and landed in New York. Her father continued in U. S. for several years, when he returned to Russia for remainder of his family, and lately came back to U. S.—Lena Halpert remained in this country, and did not go back to Russia with her father;—she resided in New York until 1909, when she went to New Orleans, whence she proceeded to Panama, with the intention of returning to her domicile in New York, and she actually returned to New Or-

leans, and landed on January 10th, 1910, and was admitted by the immigration officer. On January 21st, 1910, in New Orleans, she was arrested as an alien lately landed and subject to deportation as a person entering the country for a purpose prohibited by Section 2 of 1907 Immigration Act. In the Fifth Circuit's opinion it is said:

"Under this state of facts, the Judge a quo held as follows:

"I have no doubt the relator is a prostitute and that she was such when she arrived at New Orleans from Russia, *I am equally certain she was not a prostitute when she came to New York from Russia.* There is no doubt the Secretary of Commerce and Labor would have the right to order her deported at any time within three years after her arrival, if she had been brought here for immoral purposes, or was found within the same period in a house of prostitution. Therefore, the only question to be determined in this case is: When does the three years begin to run? Both relator and respondent have cited a number of cases, but none, however, of controlling authority. * * * *The Immigration Statutes are very drastic, deal arbitrary with human liberty, and I consider they should be strictly construed.* It is contended by respondent that in the instant case the relator, *having come to the United States as a minor, could not be considered as having come here with the intention of acquiring a domicile, and, therefore, has no status as a resident. I cannot agree with this view of the case. It seems to me that no greater hardship could be occasioned than by deporting an alien, who had come to this country at a tender age and lived here until after majority. Deportation in such a case is tantamount to exile. In my opinion the law must be held to mean that the three year period within which an alien may be deported begins to run from the date of his first entrance into this country, and a temporary absence, with an intention to return, can-*

not interfere with his status as a resident nor give the immigration authorities a right to deport him."

The Third Circuit then affirmed the order, discharging Lena Halpert.

In the *Sixth* Circuit in *United States v. Aultman Company*, 143 Fed., at page 928, the Court said:

> "The last of the four cases defining an alien immigrant was decided December 1st, 1899. Since that time the matter has been amended, especially by the Act of March 3rd, 1903; and it is a familiar principle that when a certain construction has been given to a statute, especially when its general language has been qualified, *and subsequent legislation has not undertaken to change the language so as to meet with the Judicial definition, added persuasiveness is given to the construction of the law which the Courts have put upon it.* That is to say, if Congress intended to give a wider application to the law than the Courts had given it, it is reasonable to assume that it would have so legislated when it came to amending the law, after the decisions were made public." * * *
>
> "I have no sort of doubt that considering the title of this Act, considering its various provisions, considering the conditions that brought about its passage * * *, the decisions of the U. S. Courts and the holding of the Supreme Court in the Holy Trinity Church case, this person Hermann was not in 1903 a person with whom the Act referred to prohibited the making of a contract."

Construing the Act of 1903 (which is the same on the point at issue as the Act of 1907), it was held in *re Buchsbaum*, 141 Fed., at page 222, by Mr. Justice McPherson of the Eastern District of Pennsylvania, as follows:

> "After an alien who has become a resident is entitled to the same liberty of movement

as enjoyed by residents and citizens alike; and, until he abandons his residence, he is no longer amenable to the excluding provisions of the immigration law. That law is intended to operate when the immigrant presents himself for the first time, but, after he has passed the scrutiny of the inspectors and has been admitted, he is then entitled to the rights and privileges of residents of the United States as long as he continues to be a member of this class. It is true that in one sense of the word he is always an alien until he becomes a citizen, although he may reside in this country for many years before he applies to be naturalized. But this is not the sense in which the word has been used in the statute regulating immigration. In these statutes an alien immigrant is one who offers to take up his residence here, but has not yet carried out his desire. Such an immigrant must fulfill certain requirements or he will not be allowed to land; but, having been admitted and having once acquired a residence in good faith, he is not obliged to stay in the country until he becomes a citizen at the risk of being excluded when he returns to his family or his home. There are many commercial travelers of foreign birth who are still aliens. It is impossible to suppose that the Act of 1903 was intended to apply to such persons. But it does apply to them and to all other persons of foreign birth who have not been naturalized, no matter how long they may have not lived in the country, nor what their ties of business or family may be, if the construction contended for by the government be correct. I happen to know that a president of one of our most conspicuous institutions of learning retains his foreign citizenship for certain business reasons. He has been identified with the intellectual life of this country for two generations and he is widely known as a profound scholar, but he is an alien, and he must be inspected whenever he returns from a visit abroad, if the literal meaning of that word must prevail in every case."

In February, 1908, the Ninth Circuit Court of Appeals in U. S. v. Nakashima, 160 Fed., 842, considering the 1903 Act, at page 844, said:

> "It is true that the Act of March 3, 1903, is in terms directed against all aliens, and does not, in section 2, which defines the classes of aliens to be excluded from admission, employ the word 'immigrant' or 'immigration;' nor does it employ those words in section 9, which imposes a penalty on any person or transportation company bringing to the United States any alien afflicted with a loathsome or dangerous contagious disease. If the Act were unaffected by the prior legislation, of which it is amendatory, there might be ground for saying, from its inclusive language, that it is directed against all aliens coming to the United States; *but aliens have always been allowed to reside in the United States and acquire property there, while at the same time maintaining their citizenship in the country from which they came and their right to return to the United States, after having temporarily left the same, with the intention to return, has always been recognized.* It is not to be presumed that Congress intended to change the whole trend of its prior legislation in regard to alien residents, construed as that legislation had been by the Courts, *without expressing their intention in terms so clear as to leave no room for doubt.* We find no such change of phraseology as to justify that conclusion. The Act of *March 3, 1903*, is not only amendatory, but it is a revision and collocation of the prior laws. It is true that there is to be found a substitution of the word 'alien' for 'alien immigrant' in sections 12, 13, 17 and 20; *but there is no such substitution of words in section 2, which is a substantial reenactment of the corresponding section of the Act of* 1891, with the exception that it omits the clause 'in accordance with the existing acts regulating immigration, other than those concerning Chinese laborers.' *But the omission of that*

clause does not seem to us of significance as indicating a change of policy, for the Act of 1903 *contains in itself full legislation on the subject with which it deals, and there was no occasion to refer to existing acts regulating immigration."*

* * * * * * * *

At page 846:

"In the reports of the committee we discover no evidence sufficient to show that Congress intended, by the Act of 1903, to make a radical change in the existing law; and, as the decision in *Taylor v. United States* has been reversed by the Supreme Court of the United States in the recent case of *United States v. Taylor, we may infer that the latter Court found in these documents no evidence of such an intention."*

It followed then the Panzara, Martorelli, Maiola and Moffit cases, *supra,* and following the authority of *Gonzales v. Williams,* 192 U. S., 1, affirmed the order discharging the alien.

AGAINST PETITIONER.

Second Circuit.

The case at bar sub-nom. *ex parte Hoffman,* 179 Fed., 839, already dealt with. And *Taylor v. U. S.* (alien seaman's case, reversed by this Court, 207 U. S., 120).

In the *Fourth* Circuit, in *U. S. v. Sprung,* decided February,1911, the alien woman came to U. S. in 1894,—had since made several trips to Europe. Claimed to be wife of naturalized citizen,—which the Return denied.

The majority opinion says:

"The two Federal Reporter cases cited by the Judge below, *Buschbaum's* case and *Alt-*

man's case, turn upon the construction of the words 'alien immigrant' used in the statutes *then* under consideration. They held that, when a domiciled alien returned from a visit abroad, he was not an 'immigrant,' although he was an 'alien.' *After these decisions had been rendered,* Congress struck the word 'immigrant' out of the statutes. The Court of Appeals for the Second Circuit has examined the cases cited by the learned Judge below as well as others to the same effect. It held that the omission of the word 'immigrant' from the statute under which the proceedings in this case have been taken, rendered them inapplicable. *Ex parte Hoffman,* 170 Fed., 839. The same conclusion had been previously reached by Judge Morris in the case of *U. S. v. Hook* (D. C.), 166 Fed., 1007. We are *therefore* of opinion," etc.

The Fourth Circuit Court of Appeals was in error *on a question of fact,*—for the *Buschbaum* case was decided (152 Fed., 346) in February, 1907, and the *Aultman* case was decided in 1906 (148 Fed., 1022). The so-called change was made by Congress on March 3rd, 1903,—three or four years before. How would it be possible to correctly say: "*after* these decisions were rendered, "Congress," etc.?

The majority opinion (like the Government's counsel in the Court below) cites the decision of this Court in *Lem Moon Sing v. U. S.,* 158 U. S., 538. But that decision is not in point; for this Court there was speaking of a Chinese who had "acquired a *commercial* domicile." ("He cannot "by reason of his domicile in this country *for* "*purposes of business* demand that his claim to "reenter," etc.)

That was one of the Chinese exclusion cases,—and was *sui generis;* and on its face is inapplicable. Petitioner is not claiming "by reason of her "domicile *for purposes of business*"—(presum-

ably having *another* separate home). These Chinese exclusion cases are special, unique and extraordinary,—as I shall show later herein—and are not to be wrested out of their orbit to be applied to a white woman's case.

Circuit Judge Pritchard dissented, in a learned opinion, from the majority of his colleagues; cited *Gonzales v. Williams,* 192 U. S., 7—("If she is "not an alien immigrant within the intent and "meaning of the Act of Congress • • • the "Commissioner has no power to deport," etc.), and also in *re Lea* (D. C.), 126 Fed., 234, where Bellinger, J., said: "*Her rights in such a case "are like those of a citizen.* It will not be con- "tended that a person claiming to be a citizen is "concluded by the decision of the immigration "officers that she is an alien."

Judge Ward in the *Funaro* case, 164 Fed., 154, believed that the *Rogers* and *Nakashima* cases were decided on the theory that there had been no appeal allowed to the Secretary; "if upon such "appeal the Secretary had affirmed the board in "the one case, and the collector in the other, *it is "plain* that *the Courts would have considered the "decision as final."* As a matter of fact the decision of the Third Circuit (*Rodgers*) last December, in the *Barlin* case, reiterated their previous opinion.

III.

The petitioner Annie Lapina, in the eye of the law, was a domiciled alien resident, and therefore not within the scope of the Immigration Act of 1907.

It is conceded that Annie Lapina had lived here "continuously" for thirteen years (R. 7, 10 and 11) until March, 1908; and that she came in 1897 "with a man who had promised to marry her" (R. 7),—and the Government alleges that afterwards she lived with that man as his wife, and that she "*supported him*" with the proceeds of her prostitution (R. 7). The Government contended in the Court below that "she had no per- "manent place of residence or abode at any time, "and never engaged in any honest occupation." It is conceded by the Government that she went to Europe "to the assistance of her mother who was "at Kishineff, Russia" R. 11),—*intending to return* (R. 7); and that she did return with her mother R. 7 and 11).

So that after "supporting" her common law husband, who had enticed her to come to this country, she heeded the needs of her mother, and went over 6,000 miles to her rescue,—making a journey of 12,000 miles and more in all.

She returned to this country *as she said she would*—she salvaged her mother. "*Did she put "herself in motion to quit the country, sine animo "revertendi?*"—for that is the test laid down by this Court. *The Venus*, 8 Cranch (U. S.), 280. Emphatically No—she put to sea to save her mother. The Government conceded that in the Court below.

She was twelve years of age in 1897 when she came here. The Government alleges (R. 7) that she lived in Washington State, Arizona, Texas, and other places. In those States minority ceases at 18 years of age; therefore, she was of age in 1903,—and her domicile of origin ceased. She went to Russia from March until June in 1908 (R. 7) *animo revertendi.*

The Government, in the Court below, contended that she could not point to any place and say, "That is my place of residence." But that was a mere statement, without a scrap of evidence in the record to prove it.

Unfortunately, through haste in the preliminary proceedings, no written traverse appears to have been in the record, and no oral traverse was stipulated into the record by the petitioner's attorneys in the Court below, denying the allegations and conclusions of the mind of respondent Williams, such as: "that at the time of her second "entry she *intended* to continue the practice," etc. (R. 7). How possibly could the respondent Williams *know* anything of the sort? Annie Lapina did not admit it. He says (R. 6) "that the "said warrant (Ormsby McHarg's) commanded "the said Charles T. Connell to take the said alien "into custody, and to bring her *before himself,* "etc. * * * That the said Chas. T. Connell then "proceeded to take evidence touching and con- "cerning her right to be in the United States" (R. 6 and 7).

Yet under the ruling of Judge Hand and that of the Court below, the traverse of petitioner denying her conduct would not be considered. No matter how many witnesses she produced proving her denial beyond a shadow of a doubt,—yet most of the Judges below in the Second Circuit have held that they could not review the finding of the Immigration authorities. Although they can set

aside the unanimous verdict of a jury—a trial by jury guaranteed by the Constitution—if they consider the verdict is founded on no evidence, or against the weight of evidence.

Surely this new method, built up under so-called authority of the Immigration Acts, is against the tenor of the Fifth Amendment!

Thus we have in the Twentieth Century, *opposite* to what was done in the Nineteenth, this situation: That in these United States (to quote Judge Bellinger of the Ninth Circuit in *re Lea*, 126 Fed., at page 233):

> "The methods employed, however, leave the person attacked at the mercy of the inspector, *who is accuser, arresting officer, prosecutor, judge and jailer.* * * * The exercise of this authority may not be restricted to aliens. It applies to any person *that the inspector decides is an alien.* But notwithstanding all this, the decisions cited by the respondent are to the effect that the political department of the government is charged with the duty, not only of deciding who may come to this country, but who may remain in it, and that that department may make its own rules and regulations respecting the manner in which its authority is to be exercised, and that its proceeding of whatever character or however conducted, is due process of law."

But, notwithstanding, unfortunately, that the record, on the point of domicile, consists alone of the ex parte statements of a person who was at one time accuser, arresting officer, prosecutor, judge and jailer, yet in *Cesna v. Meyers* (H. R., 42nd Congr., 2nd Sess., Rep. No. 11, from Committee on Elections) it is laid down by high authority that "a man must have a domicile some-"where." The Government in the Court below, contended that home meant domicile, and that

"she was literally a person without a home,"—therefore, she had no domicile anywhere.

This Court held in *Anderson v. Watt*, 138 U. S., 694, that "the place where a person lives is taken "to be his domicile until facts adduced establish "the contrary, and a domicile when acquired is "presumed to continue until it is shown to have "been changed."

Annie Lapina became of age in 1902—six years before she sailed to Europe to bring her mother here,—which purpose she accomplished. That is conceded. Domicile is largely a matter of intention.

It is laid down on high authority—in consonance with the decisions of the Courts—that domicile is "that place to which one returns when "temporary engagements are ended,—the seat of "one's affections and interests." That that is one's residence within the meaning of the election laws.

See Appx. to McCrary on Elections, 2nd ed., 449.

Now, if Annie Lapina had been a man, and a naturalized citizen, she would have acquired residence and domicile enough to have enabled her to vote. That is clear.

In *Behrensmeyer v. Kreitz*, 135 Ill., 591, it is laid down—on a host of authority, with which it would be mere affectation to load this brief, that

> "a man may acquire a domicile or residence if he be personally present in a place and elect that as his home."

"The intention of a party has a controlling "force in determining his residence"

Cobb v. Smith, 88 Ill., 201;
Wilson v. Marshall, 80 Ill., 78;

which simply restate what the Courts have decided in modern times.

At page 561 of McCrary on Elections it is laid down, on much authority, that

> "The habits of our people, compared with other nations, are migratory. To persons, especially young men, in many useful occupations, the choice of a residence is often experimental and temporary. The home is chosen with intent to retain it unless the opportunity shall offer a better. But if it be chosen as a home (and not as a mere place of temporary sojourn, to which some other place, which is more truly the principal seat of the affections or interests, has superior claim) we do not see why the policy of the law should not attach to it all the privileges which belong to residence, as it is quite clear that it is the residence, in the common and proper acceptation of the term."

Annie Lapina quit Russia and arrived here at 12 years of age—as Judge Lacombe said (R. 10). She here fought out her battle to keep body and soul together—after being deceived by the man she came with, when she was a child. She fought for 13 years, and still lived. She didn't quit the country. She stayed here; and then when she had piled piece upon piece of money as time went on and had got enough money together, she heeded the appeal of her mother and went away in order to return with her. The Court below concedes her intention to assist her mother (R. 11). She went back to Kishineff—the scene of the Jewish massacres several years ago, which aroused the protests of this Government. Is it not absurd to *presume*—for the Government had nothing else to go upon—that she *meant* to exchange domicile in the free Western States for Kishineff, the abode of massacre and cruelty?

She lived in the Western States. In Nebraska,

Wisconsin, Wyoming (and in Washington, Arizona and Texas, where she lived, R. 7), all disabilities as to owning real estate are removed from *resident aliens,* but not from non-resident aliens. In those Western States there is no distinction between resident aliens and citizens except as to voting and holding public office.

In 41 La. Ann., 380, in *State v. Fowler,* in 1889, it was held that a person who had never been naturalized as a citizen of the United States might be elected coroner of Jefferson parish, as he showed that he had all the qualifications of an elector prescribed by Article 185 of the Louisiana constitution.

In many of the States the qualifications for the most numerous branch of the State legislature are bestowed on aliens who have made their preliminary declaration;—consequently it happens that in many instances the persons who vote for members of Congress of the United States are not even citizens of the United States.

Bearing in mind the above, and observing therefrom the essential difference between mere "birds "of passage" and resident aliens, it is surely absurd to contend that mere non-citizenship of the United States, coupled with domiciliary residence, necessarily brings a person within the scope of the Immigration Law of 1907. And that is Annie Lapina's position.

IV.

The words "aliens" and "alien" as used in the immigration statutes existing PRIOR to 1903 and 1907, were both construed uniformly by the Federal Courts as referring to "alien immigrants" exclusively.

From the provisions of all the prior Immigration statutes (touching the point in controversy), it will be seen that the word "alien" (Acts 1875 and 1891), and the word "passenger" were used (Acts 1882 and 1884), *instead* of the words "alien "immigrants." Yet the Courts unanimously construed them as meaning, "alien immigrants."

In *Moffitt v. United States*, 128 Fed., 375. 63 C. C. A., 117, the Circuit Court of Appeals for the Ninth Circuit had occasion to consider Section 10 of the Act of March 3, 1891, providing for the deportation of "*all aliens* who may unlawfully come "to the United States," and held that—

> "This Act clearly relates to immigration, and is levelled only against immigrants, although neither of those words is expressly mentioned in Section 10 of the Act."

Again in *U. S. v. Burke*, 99 Fed., 895, in 1899 in the Fifth Circuit Court, Judge Toulmin, at New Orleans, rendered an exhaustive opinion, which under that 1891 Act appeared to have settled the law in the Fifth Circuit and the other Circuits,—for no dissent from his views appears in any reported case in any Circuit.

Remembering that said Section 10 applied to "*all aliens*," the Court said at page 896 of 99 Fed.:

> "The earlier statutes merely prohibit contract laborers being brought in. The later ones prohibit the bringing in of immigrants, * * *."

In both the *Moffitt* and the *Burke* cases, the Courts refused to construe the words "all aliens" as meaning anything other than alien immigrants;—and both cases were largely based on the principles declared in *Holy Trinity Church v. U. S.*, (143 U. S., 457),—where, although the U. S. Supreme Court conceded that the case came within the letter of the Contract Labor Law, yet it did not come within its spirit, and therefore that the law did not apply.

As the *Moffitt* case states it:

> "Immigration statutes should not be so construed as to include cases which, although within the letter, are not within the spirit, of the law. All laws should receive a sensible construction. General terms contained therein should be so limited in their application as not to lead to injustice, oppression, or absurd consequences."
>
> 128 Fed. Rep., 378.

Before the Act of 1903 was enacted,—and that Act is identical with the 1907 Act, on the point at bar,—the ruling Immigration statute hereon was that of 1891. Section 1 thereof provided: "That "the following classes of *aliens* shall be excluded "from admission into the United States, in ac- "cordance with the existing acts regulating im- "migration, other than those concerning Chinese "laborers; all idiots;" etc.

By Section 3 of that 1891 Act, persons were forbidden "to assist or encourage the importation "or migration of *any alien*" by certain means thereby prohibited; "and *any alien* coming to

"this country" in consequence was penalized. Section 6 denounced the bringing of "*any alien* "not lawfully entitled to enter the United States." Section 8 laid down the duty of the commanding officers and agents of vessels upon the arrival thereby of "any alien immigrants." Section 10 dealt with "*all aliens* who may unlawfully come "into the United States." Section 11 said: "That "*any alien* who shall come into the United States "in violation of law"—may be returned, etc.

That aforesaid Section 2 of 1891 Act was the governing exclusion provision before 1903 Act. And under 1891 Act, there were at least three leading cases decided, holding that a person in circumstances similar to those at bar did *not* come within the scope of the Immigration statutes. In 1892 re *Panzara*, 51 Fed., 275; in 1894 re *Martorelli*, 63 Fed., 437; in 1895 re *Maiola*, 67 Fed., 114.

And these decisions were made, and never reversed, notwithstanding the words of Section 8 of the 1891 Immigration Act:—"All decisions "made by the inspection officers or their assist- "ants touching the right of *any alien* to land, when "adverse to such right, *shall be final*, unless ap- "peal be taken to the Superintendent of Immi- "gration, whose action shall be subject to review "by the Secretary of the Treasury."

V.

The use of the word "aliens" in Acts of 1903 and 1907, instead of "alien immigrants," does not indicate any intention on the part of Congress to make the statutes of 1903 and 1907 apply to an alien statused as in the case at bar.

See hereunder Congressional History of 1903 *Act.*

An examination of the Act of 1903—identical with the Act of 1907 on the point at bar—will show that it was intended to be a codification of the Immigration Laws which had previously existed; and the Congressional history of the Act shows that the framers of it so asserted in Congress.

Codification is one thing—it collects; amendment is another,—it changes. In the interests of brevity and consistency codifiers make minor changes in phraseology,—but *radical* changes ought not to be construed—from the wording of a codification—*unless the intention is clearly shown that such radical change is meant.*

The United States Circuit Court in the Louisiana Lottery cases, in a luminous judgment, demonstrated the injustice of the contrary.

U. S. v. Dauphin, 20 Fed., at page 628.

See to same effect, among many other decisions, Chancellor Kent in 1823 in

Goodell v. Jackson, 20 Johnson at page 722.

And in

Taylor v. Delancey, 2 Caine's Cases, 151,

Chief Justice Spencer of New York said:

> "When the law *antecedently to the revision* was settled either by clear expression in the statutes, or adjudications on them, the mere change of phraseology shall not be deemed or construed a change of the law unless the phraseology *evidently purports* an intention in the legislature to work a change, and if any doubts are entertained the Court is authorized to look at the law as it was before the revision."

and

Dominick v. Michael, 4 Sandf., 409,

(Judge Duer) to the same effect.

The title of both Acts (1903 and 1907) is identical—"An Act to regulate the immigration of aliens" into the United States;—just as the excluding Sections 2 are identical—so far as the case at bar goes.

The Act purports to deal with *Immigration,—and nothing else.*

It is well settled that where the language of a statute is ambiguous or otherwise doubtful; or, being plain, a literal construction would lead to such absurdity, hardship or injustice, as to render it irrational to impute to the law-making power a purpose to produce or permit such result the title may be resorted to as tending to throw light upon the legislative intent of its scope or operation.

U. S. v. Fisher, 2 Cranch., 386;
2 L. Edn., 304.
Holy Trinity Church v. United States,
143 U. S., 462.
12 Sup. Ct., 511.
36 L. Ed., 226;
Coosaw Mining Co. v. South Carolina,
144 U. S., 563.
12 Sup. Ct., 689.
36 L. Ed., 537.

But if anybody is suspicious that Congress meant to deal with *something else*,—and doubts that Congress meant to be limited by the title Congress has given the Act,—then it is proper for this Court to look at the Congressional history of the Act,—just the same as it has done before in many cases.

Let us look at the Congressional history of the 1903 Act. *I will show clearly that in that enactment Congress never intended that it should apply to resident aliens.*

Such a change would, of course, have been most radical—considering the previous decisions in *Panzara, Martorelli and Maiola* cases, *supra*. The subject would certainly have been discussed,—and Congress' intention made so clear that nobody could reasonably misunderstand.

The very learned Mr. Justice Brewer in *Holy Trinity Church v. U. S.*, 143 U. S., 457, said:

> "We find, therefore, that the title of the Act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress, *the reports of the Committees of each House*, all concur in affirming that the intent of Congress was simply to stay the influx of this cheap unskilled labor."

To the same effect, *Binns v. U. S.*, 194 U. S., 486.

Remembering that the Courts had given a certain construction to the statutes, as aforesaid,—surely, then, if Congress *intended* to give a wider sweep to its "Act to regulate the *immigration of "aliens,"* it is reasonable to assume that it would have so legislated when it came to amend the law,—and it would have done so unequivocally and certainly—and the Congressional Committees in Senate and House would have so proclaimed.

But they disavowed emphatically anything of the sort. The Chairman of the House Committee and the Chairman of the Senate Committee both agreed on that. Their statements,—hereunder set out,—show that beyond question.

CONGRESSIONAL HISTORY OF ACT.

House.

The 1903 Act, originated in 1902, in House of Representatives (57th Congress H. R. 12199). In Congressional Record, 1st Session, 57th Congress, Vol. 35, Part 6, page 5757, Mr. Shattuc, (Chairman of the House Committee on Immigration), moved that the House consider the bill in Committee of the Whole. At 5764 he said:

> "A summary of the more important changes, additions and improvements embodied in this new bill may be appropriately given here."

At pages 5764 and 5765, the changes are set out, as follows:

> The *proposed* law excludes from admission to the United States, or any place subject to the jurisdiction thereof, the following classes of *alien immigrants*: All idiots, insane persons, epileptics, etc.
>
> * * * * * *

Page 5765:

> What is considered a fair and equitable provision is also included, which provides that if an *alien immigrant,* who is really not entitled under the law to enter this country, should be admitted by the immigrant inspector, and is afterwards found to be here unlawfully, the fact that the inspector admitted him relieves the steamship company of the penalty of a fine of not more than $1,000 provided for attempting to land such aliens, but does not relieve the steamship company from taking such alien back at the expense of the company if found here within one year after his arrival. Many safeguards are thrown around the actions of inspectors under the proposed law, and it will be very difficult for

an immigrant, who should not be admitted, to get through safely.

The provision also covers those *immigrants* who secure entrance into the country without inspection. * * *

Page 5765:

The old laws make a distinction between those aliens who become public charges from causes existing previous to their landing here and those who become so from causes arising after such landing. The new bill is the same in this respect. It provided that any alien who shall become a public charge from causes existing prior to landing shall be deported to the country from whence he came at any time within one year after his arrival at the expense of the steamship company bringing such alien here, and to this is added in the proposed law one-half the cost of inland transportation to the port of deportation.

* * * * * *

Page 5765:

The foregoing comprises briefly all the proposed legislation that is essentially new in this Act, that is, all that is *not already on the statute books, and the entire codification is really and simply a fuller application of the principle of existing laws.* Of this there is certainly much need, and the committee believes such changes and improvements to be necessary and imperative.

Page 5767:

In Committee of the Whole Mr. Shattuc was asked by Mr. Watson:

Do you exclude persons coming across the Canadian border that are not now excluded?

Mr. Shattuc: The theory of the committee is that we ought not to take up the question of the Canadian border and we ought not to take up the educational test, nor should we

take up the question of selling liquor on the Government reserves in this bill, but that we ought to get some good legislation and put it on our statute books and then take up these several meritorious measures by themselves.

The fact is that we have not been able so far to get any good immigrant legislation because there are three or four different classes of people here in this House, who are not satisfied to have some good first-class legislation passed, but they went better legislation, and they want to tack onto the bill the educational test if they can, and others will tack on, if they can, the question of the Canadian border, and that is the worst trouble we have to deal with. Then, too, our good prohibition friends want to tack on the liquor question, and so the bill gets loaded up and is defeated. I hope that this bill will receive the support of all of our good friends, those who desire the educational test, those who want no liquor sold anywhere within a thousand miles of any place where the Government owns land, and those who want nobody to come over the Canadian frontier. The committee considered all of those questions, and has reported this bill with the hope of getting something done in the House.

Mr. Watson: I understood a good portion of the gentleman's argument to be directed to excluding people from coming over the Canadian border who now come.

Mr. Shattuc: *Oh, no; because we do not want to endanger the passage of this bill.*

Mr. Watson: Then I understand that that was just a general observation?

Mr. Shattuc: Yes.

SENATE.

In the Senate Committee on the same bill (see 9 Senate Report, No. 2119, 57th Congress, 1st Session), Senator Penrose, in charge of the bill there, said:

> "With the exception of certain features, which will be referred to further on in this Report, this measure is a reenactment of existing laws upon the subject of immigration. * * * The *absence of comment* on any part of the measure indicates that such portion is, either in terms or *in substance,* existing law."

There is a total absence of any comment on the question at bar.

In the Senate, Senator Penrose (see Congr. Record, Vol. 36, Part 1, page 97) again said:

> "It is a codification of existing Treasury regulations and law."

At page 99 to 100, same volume, Senator Lodge said,—(and remember this was called the Lodge Bill, and was introduced under suggestion from President Roosevelt in his Message):

> "I will say that this bill, of course, *is intended to affect only immigrants,* and it seems to me that in order to make it clear beyond a doubt it is better to use that word."

Section 2 was not debated at all—(page 105, Congr. Record, Vol. 36, Part 1).

Senator Clay said at page 129 of same volume:

> "I do not think there is any misunderstanding between the Senator and myself. *I have never understood that this bill intended in any of its features to refer to anything except immigrants.*"

Senator Fairbanks said at page 2805, Vol. 36, Part —:

> "The bill is a codification mainly of existing laws. It embraces, among other things, very important and necessary administrative features. * * *
>
> "*What is there in the bill as it stands now*

that is not found in some form upon the statute books to-day? The larger part of it is essentially a codification of existing law."

Mr. Tillman: Will the Senator briefly explain just what changes have been made in existing law? I do not want a synopsis, but I want a general outline of the most essential alterations, if there are any. Now, if this is mere codification, that is not necessary.

Mr. Fairbanks: I will say——

Mr. Tillman: I want those essential changes. Of course, I know there is a head tax, which is not the present law.

Mr. Fairbanks: Yes, that is increased from $1 to $2. * * *

There are no essential changes from the present law. There was a very important change proposed by the application of an educational test, but, as I have stated, an amendment has been adopted striking out that provision. That was a very essential change from the existing immigration laws. There are no radical or substantial changes in the bill from the existing laws which are found scattered through many volumes of the statutes. (Vol. 36, p. 2806.)

Mr. Tillman: I would rather vote for a bill that contained the educational qualification for immigrants. * * *

Mr. Lodge: It has been withdrawn and is not in the last bill. We can save the administrative features, which are of great value, and which the Department desires because it improves the method of administration. *That is all that remains in the bill."*

In the House Bill (1903 Act) Section 1 began: "That there shall be levied, collected and paid "a duty of $2 for *each and every passenger* not a "citizen of the United States," etc.

That was the verbiage of the old "Act to reg- "ulate immigration" of 1882,—the Senate proposed to strike out "passage" and insert "alien immigrant." And thereupon in the Senate ensued a very lengthy debate on Section 1.

There was afterwards no debate on Section 2, the section in question in this case at bar; the Senate went to Section 3, another subject.

The debate is in Congressional Record, Vol. 36, at page 134, et seq. (57th Congr. 2nd Session). Space forbids setting it out here,—although it would more than ever show petitioner's argument is correct.

In the Senate Committee on Immigration, on June 18th, 1902, present: Senators Penrose (chairman), Fairbanks, Lodge, Dillingham and Dryden. Present also: Hon. W. B. Shattuc (chairman of the House Committee on Immigration) and others. These hearings are set out in Senate Document 62—57th Congress—1st Session. (Vol. 6, Senate Documents. Serial No.: 4421.)

Among much evidence, we find at pages 100, 101, 102: "Statement of Mr. A. S. Anderson, of Phila-"delphia, Passenger Manager, International Nav-"igation Company." This was in regard to the Act of 1893 ("An Act to facilitate the enforcement of Immigration and Contract-Labor Laws of the U. S."), *which related to manifesting passengers by ship masters,*—leaving the 1891 Act the dominating Act as to classes excluded.

Mr. Anderson said:

> "The present bill follows very closely the Act of 1893, and when this was enacted it was evidently not expected nor intended that cabin passengers would be subject to these provisions, because for several years after the passage of the act no attempt was made by the immigration authorities or the Treasury Department to enforce a strict and literal compliance as regards cabin passengers.
>
> After several years it was found that occasionally a criminal or a contract laborer would come over in the cabin of the steamer, and an effort was made to enforce the examination and manifesting of alien cabin pas-

sengers as strictly as of steerage; but it was found impracticable for the following reasons:

First: Cabin passengers, as a rule, do not arrive at the port of departure until the day of sailing, and the steamship officials, as a dule, do not see them until just as they embark. There is no time or opportunity to make any such inquiries of them as are required to be made of immigrants to say nothing of the physical examination.

Second: Under the Act of 1893 the lists must be sworn to before the United States consul at the port of departure. This could not be complied with, because no lists could be ready.

An effort was made to overcome these difficulties by having the cabin lists made up during the voyage, and having them sworn to before the immigration officials at the port of arrival. The instructions under which the attempt was made were issued on November 14, 1898.

The attempt to obtain the required information failed because:—First: The cabin passengers not only refused to submit to any physical examination, but refused point blank to answer the questions, claiming that they were grossly insulting. The passengers strongly expressed the opinion that no civilized government would put such questions to the visitors to its shores, leaving it to be inferred that they blamed the steamship companies for the insults.

Second: Because under these conditions the captain and surgeon could not make the required oaths.

The order was revoked, but afterwards it was found that the order was not strictly in accord with the law.

The matter was submitted by the Secretary of the Treasury to Attorney General Griggs. * * * As I read this document the following points seem to be brought out.

First: That the Secretary considered it both inconvenient and useless to put cabin passengers, before sailing, through the processes mentioned in sections 1 and 2 of the Act of 1893.

Second: That the law requires the manifests to be made at the time and place of embarking.

Third: That Congress has treated immigrants in some of the immigration laws as 'persons different from cabin passengers, recognizing in that the notorious fact that immigrants are usually not cabin passengers.' But under the laws of 1893 they cannot be divided according to the parts of the vessel they are in.

Fourth. Sections 1 and 2 of the Act of 1892, which gave the Secretary of the Treasury the power under certain limitations to regulate immigration, are quoted, and the Attorney-General says: 'It is from this authority of the Secretary that it seems not altogether impossible to obtain the desired relief, in part, if not wholly.'

Fifth. The Attorney-General says: 'While I am aware that from the prior legislation referred to there may be reasons gathered for giving a very broad meaning to the word 'immigrant' and for holding that the master must at his peril examine every alien on board, and perhaps Americans also, to prevent the omission of any immigrants from the lists, yet I can not regard it as consistent with the wisdom of Congress that a thing so unreasonable, so obstructive to passenger travel, so harrassing to vessels whose passengers come aboard shortly before the hour for departure, so annoying and distressing to persons traveling for pleasure, should be required under a penalty."

* * * * * * * *

"The Attorney-General in his opinion to which I have just referred appeared to rely largely upon the interpretations of the word

'immigrant' in suggesting a plan of relief. *But in the new bill the word 'immigrant' has been eliminated and the lists are required to be signed and sworn to at the port of arrival, but the lists are still required to be 'made at the time and place of embarkation of such alien or aliens on board such steamer or vessel.'*

"In short, all the objectionable features of the present law have been left in this bill, and the only ground on which a measure of relief could be based has been taken out.

"A glance at some of the questions and conditions contained in these sections *will help you to appreciate the situation that you are asked to create.*

"If the law applies to 'all aliens' cabin passengers cannot possibly escape."

The Attorney-General's opinion will be found in Appendix to this brief.

At page 195 Mr. Anderson again said:

"The manifesting of cabin passengers and the rules under which the Treasury Department is advised that they may mitigate that requirement, as far as first cabin passengers are concerned, so that they shall not have to answer all these questions, are made by the Attorney-General on the fact that the word *'immigrant'* is used, and that there is a distinction between cabin passengers and immigrant passengers, who usually occupy the third class.

"Now, in this new bill the word 'immigrant' has been eliminated, and it says all cabin passengers must answer—not one question, not other questions, not a sufficient number of questions to satisfy you that they are not objectionable aliens, but every question that is asked a steerage passenger. I do not mean to say you should not include passengers within these examinations. Do just as you in your wisdom think proper; but it seems to me that you could eliminate a lot of these ques-

tions from those that are asked cabin passengers and still get at the real status of those people.

"Representative Shattuc: Mr. Anderson, you suggest we have not used the word 'immigrant' in the bill. Do you know the definition of an immigrant?

"Mr. Anderson: I only know that the Attorney-General in his opinion, has given it a different definition from the word 'alien.'"

Statement of Richard K. Campbell, of the Bureau of Immigration, at pages 402, 403:

"My object in calling attention to that provision in the act of 1882, which is identical with the bill that was reported by the Senate Committee at the opening of the present session, was to show that this tax is not a tax on the alien. It may indirectly come out of him and it may not. According to the testimony of representatives of the steamship companies, it does not come out of him. * * * But whether it does or not, the payment is to be made specifically by the masters, agents or owners of vessels. I call attention to it because I understand an amendment has been adopted by the Senate which reads: 'That there shall be levied, collected and paid a duty of three dollars for each and *every alien immigrant,*' instead of 'passenger.'

Senator Fairbanks: Is not the important matter there the amount of the tax to be levied rather than the question as to who shall pay it?

Mr. Campbell: I am going to show you, if you will allow me, Senator, that that question goes directly to that point—to the amount that shall be paid. The term '*alien immigrant' is a modification of the existing law,* and I understand that it is based upon the proposition, that, inasmuch as we do not charge Canadians a head tax (that is the broad way in which the proposition is stated) such a course involves a violation of our treaty obligations; that is, the obligation of

the most-favored-nation clause, which appears in all our treaties.

If the head tax was collectible from the alien there might be some ground for that contention, or if it were true that we did not claim a head tax from Canadians that would be true. We do collect a head tax from Canadians and from Mexicans, but not directly. We collect it from the steamship company which brings them to our seaports from transoceanic ports.

Senator Fairbanks: You do not bring Canadians from transoceanic ports?

Mr. Campbell: Oh, yes; a great many of them.

Senator Fairbanks: Down the coast?

Mr. Campbell: They are brought from Europe. If you will notice the Commissioner-General's report you will see a statement of the number of Canadians who have come from Europe to this country.

Senator McLaurin, of Mississippi: Does not the bill as it now stands amended propose to collect the head tax from Canadian *alien immigrants?*

Mr. Campbell: That is exactly what it does.

Senator McLaurin, of Mississippi: That is what I thought.

Mr. Campbell: But my purpose is to show you that when the term *'alien immigrant'* is employed it qualifies the section and limits the class on account of whom the tax can be collected.

The Courts have determined that an alien immigrant is an alien who is coming here with a definite and distinct and avowed purpose of settling here. I take it that I need not reason that if the bill is passed in this shape, whatever may be his purpose in truth, every alien will profess that he is simply coming here for a visit, *in which case we could not collect a head tax of any sort on account of him."*

And again Mr. Campbell said at pages 403, 404:

"The Chairman: How have we altered the status of the French Canadians chiefly?

Mr. Campbell: There is an exception made here. You limit them by calling them *alien immigrants*. Then you have a limitation on page 2, beginning in line 18:

'The head tax herein provided for shall not be levied upon aliens'——

No head tax has ever been levied heretofore upon aliens 'in transit through the United States, nor upon aliens who have once been admitted into the United States and have paid the head tax who later shall go in transit from one part of the United States to another through foreign continguous territory.'

If that provision should be enacted, it would seriously complicate the administration of the law along the border.

As was stated here yesterday, and as will be stated later by one of our officers who has charge of the Canadian inspection, the examination of aliens coming from Canada has been made very effective by virtue of an agreement with the railroad and steamship companies. But under arrangement proposed by this bill it will be necessary to have an immigrant station at every railroad crossing, *because that point would have to be determined just at the time of arrival,* and it would involve a delay there of the trains or else a removal of the aliens from the trains and their detention pending the determination of the question, *as to whether they had been in the United States before.*

Senator Fairbanks: You think, then, that the provision is objectionable?

Mr. Campbell: Yes, sir.

Senator Fairbanks: Who was the author of it, the Department?

Mr. Campbell: No, sir. The Department recommended the section as it stood at the time the bill came from the House to the Senate. I have endeavored to refute the only reason I have heard for *inserting the words*

'alien immigrant' and for making that alteration which I have just quoted, which is that, in the absence of any such limitations, there would be a violation of the favored nation clause of our treaties. *I contend that that view was based upon the erroneous impression that the tax is levied on an alien and payable by him.* If such were the case, I think there would be some justification for that view. But as the tax is paid by the transportation company I do not think there is anything in it, and I must protest that the measure as it now stands looks rather as though it had emanated originally from sources interested in reducing the head tax by some other means than by a direct attack on it. It would very materially reduce it. I think I have been able to show you that as to any alien who chooses to profess that he is not coming here to settle, *the transportation company would not be chargeable with the payment of a head tax.''*

And again Mr. Campbell, page 405:

''Senator Fairbanks: Now, what modification would you suggest in Section 1?

Mr. Campbell: I would suggest a *restoration of the language contained in the bill,* but as originally reported. The language is as follows: 'That there shall be levied, collected and paid a duty of three dollars for each and *every passenger* not a citizen of the United States, or of the Dominion of Canada, the Republic of Cuba, or the Republic of Mexico.'

I do not know whether I have myself very clear on the point that I understand Senator Foraker raises, but I should like to call attention, as a means of fortifying my view, to the fact that the act of 1882 has had the test of years of application, during which time vigorous resistance has again and again been made to the payment of a head tax, though never upon the ground suggested by Senator Foraker.''

Mr. Anderson (representing steamship companies) said at page 410:

"Mr. Anderson: Now, if you except from the operation of this law an alien who has lived in Canada for a year and you do not except from its operation an alien who has lived in the United States for a year, the consequence will be that when an alien came from Canada he would escape the operation of the law. He would live here and declare his intention to become a citizen, and he might live here four years and go back to Canada on some business, and when he attempted to reenter again he would have to pay the head tax again and would lose the advantage which could be gained by residing for one year in Canada. *In other words, we would discriminate against aliens who lived in this country for any number of years. He might have lived here for twenty years without having become a citizen.* I only wanted to call your attention to that point.

Senator Fairbanks: *It would not affect him unless he went to Canada for the purpose of gaining a permanent residence there.*"

At page 450:

"Representative Shattuc (in charge of the Bill): Mr. Chairman, I should like to make a statement. I will not take more than two or three minutes.

The Chairman: Proceed, Mr. Shattuc.

Representative Shattuc: I wish to state the reason why it will be quite impossible to carry out the amendment which was introduced by the Senator from Ohio, Mr. Foraker, making the head tax apply only to *alien immigrants.*

On the steamers coming to this country they have only three classes of rates, first, second and third. Every immigrant, whether he is an alien immigrant or any other kind of an immigrant, if he is a poor man at all, will come in the third class.

The passage rate for the tickets of all

classes always includes the head tax, whatever you make it. There is no extra charge by the steamship company for the head tax. The steamship companies pay the Government the head tax, but do not collect it from the passenger or immigrant. *So if you relieve by law all others than alien immigrants from the burden of this head tax you relieve all, because the steamship companies cannot tell who should pay the tax and who should not.* The transportation companies will all have to rely entirely on the honor of the *immigrants,* and an immigrant can easily say he does not intend to become a citizen of the United States or to remain here, *in which case there is no head tax due from the steamship or transportation company.*

Senator Fairbanks: What has the Government to do with the classification if the head tax is imposed upon each and every *alien immigrant?*

Representative Shattuc: A man is not an alien immigrant, as defined by law, who does not come here for the purpose of living in this country, and the *alien immigrant* is the only person charged with the head tax; other immigrants come in free. Here stands a man who comes here an alien immigrant. Here comes in a brother of his who is not an alien immigrant, both buying the same class of ticket. *One is an alien immigrant because he tells the inspector that he intends to become a citizen of this country. His brother is not an alien immigrant because he tells the inspectors he does not intend to remain. The steamship company pays the head tax for one only.* One ticket should be $3 lower than the other, but both will be sold at the same rate.

The Chairman: *You mean to say that it does not benefit in any way the passenger or the tourist coming over here to adopt the amendment of the Senate changing the word 'passenger' to 'alien immigrant?'*

Representative Shattuc: That is correct."

Again, at page 451:

"The Chairman: I understand General Shattuc's point. He, in his bill, put the head tax *on passengers* coming into the United States. The Senate has only put it on *alien immigrants*. General Shattuc maintains that it does not benefit or help the passenger, because the steamship company will not sell tickets at a uniform rate which includes the head tax.

Senator Fairbanks: I understand it perfectly.

Representative Shattuc: The question as to what the tax shall be is another matter entirely. *This is a question as to whether we shall get anything at all from collections on the head tax.* I assume to say that you will not collect much of anything from the steamship companies if you change the law so that the head tax applies only to *alien immigrants*. Most of the immigrants will say that they are not alien immigrants, and there is and can be no way of disproving this statement. If you charge alien immigrants—those coming here with a view of becoming citizens—and do not charge the head tax for immigrants who will say they are not alien immigrants, because they do not intend to settle here, and intend to return to their own countries, you will be specially favoring those who come here as birds of passage to work against our wage earners for a while and then return to their old homes to spend their savings.

Senator Fairbanks: Then you recommend that the word '*immigrant*' *be stricken out?*

Representative Shattuc: Undoubtedly, and we should provide that 'all passengers' shall be charged a head tax. I regard that as the most important feature of the bill.

The Chairman: That is the present law?

Representative Shattuc: It is the present law. I do not think this matter is clearly understood in the Senate. The bill as it was reported to the House bore the written and signed approval of the Secretary of the Trea-

> sury, who has charge of the Department which will administer it, and it may be added that the bill is substantially in accord with the conclusions of a conference of experts in the employ of the United States Industrial Commission, some of the greatest alienists (!) in the country, the Commissioner General of Immigration, and the attorney of that department, Mr. R. R. Campbell. It may be said, therefore, to embody the best expert suggestions obtainable."

At page 466—in statement of Hon. Frank P. Sargent, Commissioner-General of Immigration:

> "There is just one other point I wish to call your attention to. The elimination of the amendment which was made in the Senate, to which your attention has been called, will mean a great difference in our head tax. I refer to the words '*alien immigrant.*'
>
> The Chairman: I think the Committee understands that feature."

Counsel will refrain from further pursuing the record in Congress, on this point. Only proper anxiety to lighten the labors of this great Court by lucid presentation, as well as profound respect for Mr. Justice Lacombe, has impelled me to develop so much fact. Is it not plain that that learned Judge on the construction in the Record herein, page 11, is mistaken?

VI.

The Government's present contention is negatived by the statistical rules issued by the Government department.

In the Statistical Rules issued by the Department of Commerce and Labor, attached to the Immigration Regulations made under the Immigration Act,—I quote from the Government print dated 1908,—approved by Secretary Straus, June 22, 1907, there is Rule 30 as follows:

> "Departing aliens shall be divided into the two clasess, emigrant and non-emigrant aliens. Alien residents of the United States leaving the country permanently shall be considered as 'emigrant aliens.' Alien residents leaving the United States with the intention of remaining abroad but temporarily * * * shall be considered as 'non-emigrant aliens.' "

VII.

The Government's present contention was not recognized by the Secretary of Commerce and Labor at the time the 1907 Act was enacted,—and long afterwards. The Department's own written response to Congress proves this:

The following copy of an important document proves this beyond question:

"60th Congress. House of Representatives
2nd Session. Document No. 1494.

ADMISSION OF ALIENS INTO THE UNITED STATES.

Letter from the Secretary of Commerce and Labor Transmitting a Response to the Inquiry or the House and to Admission of Aliens into the United States.

March 1, 1909—Referred to the Committee on Immigration and Naturalization and ordered to be printed.

DEPARTMENT OF COMMERCE
AND LABOR
OFFICE OF THE SECRETARY
WASHINGTON, Feb. 25th, 1909.

Sir:

I have the honor to acknowledge the receipt of a resolution of the House of Representatives, dated February 22nd, 109, reading as follows:

RESOLVED: That the Secretary of Commerce and Labor be requested to inform the House of Representatives as to the following matters:

(a) What number of aliens were admitted into the United States, during the fiscal year ending June 30th, 1908, *under the allowed claim of theretofore acquired permanent domicile in the United States.*

(b) *What number of aliens so admitted would but for such domicile, have been inadmissible.*

(c) What number of aliens during this period were admitted on parole or temporarily.

With respect to paragraph (c) of said resolutions, I have to say that the inquiry therein set forth is not understood by the department, and although Honorable A. P. Gardner, a member of the Committee on Im-

migration and Naturalization, was in my office at the time of the receipt of the resolution, he was unable to explain what information is sought by said paragraph. Aliens are temporarily landed at the ports of the United States, in administering the immigration laws, for several distinct reasons. If this feature of the resolution can be made sufficiently explicit to indicate clearly the data desired it will afford me much pleasure to respond promtply.

With respect to paragraph (a) the records of the Bureau of Immigration and Naturalization of this department show that during the fiscal year ending June 30, 1908, *14 aliens were allowed to enter this country solely because of a satisfactorily established claim of theretofore acquired permanent domicile; that during the same period 5 aliens who were otherwise inadmissible were admitted upon a satisfactory established claim of domicile,* considered in conjunction with the fact that the *mental or physical defect* with which such aliens were suffering *has been contracted during the former period of residence in this country;* that in the case of 15 aliens rejected as persons deemed by boards of special inquiry to be likely to become public charges, *an uncontroverted claim of former domicile was taken into consideration as one of several important items of evidence regarded as sufficient to justify the department's order for the admission of the applicants,* and that in the cases of 1 aliens detained at ports because thought to be inadmissible as likely to become public charges, or by reason of the issuance against them of certificates for physical afflictions not of a loathsome or dangerous contagious nature, *uncontroverted claim of former domicile* was given consideration as one of several important items favoring the aliens on condition that a bond guaranteeing that they would not become a public charge should be submitted in accordance with Section 26 of the immigration act.

As to paragraph (b): *None* of the 14 aliens mentioned in the first clause, nor of the 6 menitoned in the second clause of the preceding paragraph hereof, would have been allowed, if aliens within the meaning of the law, are mandatorily excludable. The 13 aliens covered by the third and the 18 covered by the fourth clause of the preceding paragraph hereof might have been admitted, under the law, irrespective of the claim of domicile, for none of them belonged to classes mandatorily excluded.

It should be added, perhaps that the action of the department in the above mentioned cases is based upon the following decisions of Federal Circuit Courts of Appeal: United States v. Aultman Company (148 Fed., 1022, 6th Circuit); Rodgers, United States Immigration Commissioner, et al., v. United States ex rel. Buchsbaum (152 Fed., 346, 3rd Circuit), and United States v. Nakashima (160 Fed., 842, 9th Circuit), *all of which are to the effect that a foreigner who seeks re-admission to this country to resume a formerly acquired and unrelinquished domicile is not an alien within the meaning of the immigration law.*

Respectfully,

OSCAR S. STRAUS,
Secretary.

Hon. A. McDowell,
Clerk, House of Representatives."

This Court said in *U. S. v. Ala. R. R. Co.*, at page 142, U. S., 621:

> "Here we think the contemporaneous construction thus given by the executive department of the Government * * * a construction which, though inconsistent with the literalism of the Act, certainly comports with the equities of the case,—should be considered as decisive in this suit."

VIII.

The words "alien" and aliens" and "passengers" had been used in four previous Immigration Statutes as meaning "immigrant."

This is shown in detail in Point I hereof, in Immigration Acts of 1875, 1882, 1885 and 1891.

CONCLUSION.

The greatest known force in this world is the Truth—for that is the only *real* reformer. The Truth in the case at bar is *not* that in the *excluding* section of the 1903 Act Congress "omitted the "word 'immigrant' *which was contained*" in the excluding section of 1891 Act,—as Judge Purdy would have it in exparte *Petterson*, at page 541 of 166 Fed. The word "immigrant" was *not* used in that way in the 1891 Act—as I have shown. It was *not* used in the *earlier* Immigration Acts—I have shown that, too. It is *not* true that Congress did "thereby in clear, plain and "unmistakable language evince an intention" to include any domiciled residents within the scope of the 1903 and 1907 Acts. It is *not* true that the Act is "directed against" such residents. Senators Fairbanks, Penrose, Lodge, Gallinger, Clay and others, as well as the chairman of the House Immigration Committee distinctly disavowed that, —as I have shown in detail. It is *not* true that the person who has lived in Canada one year (Sec. 1, 1907 Act) shall be better off than the person who has lived in United States twenty years who has left temporarily *animo revertendi;*—this Senator Fairbanks was careful to point out (su-

pra). It is *not* true that Congress passed the 1907 Act to get rid of the decisions in the Buchsbaum, Aultman and Nakashima cases—(as Judge Rose intimated in the Sprung case, supra). For the 1907 Act differs not from the 1903 on the point debated. This Judge Lacombe was careful to point out. Had not Attorney-General Griggs given the opinion, supra, as to manifesting, etc.,—(which showed the inconvenience of the words "alien immigrant"—as it compelled customs officials to overlook "birds of passage")—very likely even the manifesting section would have remained with the words "alien immigrant,"—which was a new term never seen in the Acts prior to 1891, and then only in the manifesting section. Everywhere else in the 1891 Act it was "alien,"—the same as in previous exclusion sections. I have shown it in detail. Section 12 of the 1903 and 1907 Acts as to manifesting or listing "birds of passage" (I use the term constantly used in the huge Report of the Industrial Commission which sat for two years just prior to 1903) further remedied the old situation.

False ratiocination,—from false a priori grounds must not blot out Truth.

As Judge Bellinger said (*re Lea*, 126 Fed., 233) the Government's contention would permit an inspector, who is accuser, arresting officer, prosecutor, judge and jailer to cause the deportation of a man like Coroner Fowler of Louisiana, who was not a naturalized citizen (41 La. Ann., 830),—or of some members of the Legislature in western States, who have not yet been naturalized,—only having their "first papers"—notwithstanding that these very members vote for members of Congress itself.

If a domiciled alien who has taken out his first papers—(and some of the Judges in the lower Courts have held themselves without jurisdiction,

to inquire into deportation of such inchoate citizens)—goes abroad and is subjected to pains by a government other than that of his origin, the United States Ambassadors have been held justified, on proper showing, to interfere on behalf of such inchoate citizen. (See Foreign Relations of U. S., 1884, page 552.) And yet the Government contends that Federal Judges have no jurisdiction to concern themselves with the very persons on whose behalf U. S. Ambassadors have interfered. Surely here is an inconsistency and paradox,—and a departure from the simple and true by officials of a nation which has ever detested the doctrines of arbitrary power.

It is true that here and there in the Reports in Chinese Immigration cases there are a few sentences (as in the *Lem Moon Sing* case) which may be twisted in support of the Government's argument,—twisted away from their subject matter—but I submit they are inadvertent mere obiter dicta which do not bind even those that uttered them when applied to resident domiciled aliens. It must be that there is some plausibility in the Government's argument, since it has commanded the assent of such able minds;—but it is nothing more than plausibility,—which vanishes when the Truth is unearthed. The doctrine of this Court is that the fundamental rights of alien domiciliary residents on American soil can only be taken away by due process of law; and this does not include the arbitrary mandate of merely administrative officers. It would be mere affectation for an American lawyer to cite authority to support that peculiarly American proposition.

One cannot but think that this subject heretofore has been inadequately presented,—and this Court has not been in the habit of placing a vital question of constitutional law beyond the reach of

agitation until its merits have been thoroughly discussed.

If I am wrong, a radical departure from our national policy is here presented,—a departure disavowed by the framers of the Act of 1903 and by the Chairman of the Committees of both Houses of Congress. By adopting the Government's construction of the Act we should in effect accuse Congress of gross disingenuousness. One must not impute to Congress a purpose to

> "——Palter in a double sense,
> That keeps the word of promise to the ear
> And breaks it to the hope."

As President Grover Cleveland said in 1897, when vetoing an Immigration Bill, "the substitute "adopted should be just and adequate,—free from "uncertainties and guarded against difficult and "oppressive administration." It is inherently improbable that Congress, when dealing in a large way with a large subject, should turn aside from its stated purpose ("An Act to Regulate Immigration") to deal in a backhanded way with alien residents and put them on an entirely new status, —after having expressly disavowed any such intention.

> "This is a highly penal statute and we think the well known rule as laid down by Chief Justice Marshall in *U. S. v. Wiltberger*, 5 Wheat., 95: 'The rule that penal statutes are to be strictly construed is perhaps not much less old than construction itself. It is founded on the tenderness of the law for the rights of the individual.' "
>
> *Hackfeld v. U. S.*, 197 U. S., 442.

True, deportation is not technically imprisonment,—but substantially it may be worse in the case at bar. For the petitioner would be torn from her aged mother, whom she had rescued

after a journey of 12,000 miles,—and cast into a country away from her friends,—and among utter strangers, whose language she does not even understand.

I am here reminded, though, that a thing like that actually did happen in February, 1911, in *U. S. ex rel. Canfora v. Williams,* 186 Fed., 354, in the Second Circuit, before Judge Holt. There a man named Canfora had been here continuously 16 years;— had "led a blameless life." "Had "grown children, earning good wages. Had $200 "in bank. Children offered a surety bond, in any "amount required that he would not become a "public charge" (page 355, words of Judge Holt). The opinion further states:

> "About six years ago gangrene developed in his foot, which ultimately made necessary the amputation of his leg. Last summer he went to Italy to visit his mother. Shortly before his return the Commissioner of Immigration received the following letter." The letter stated that Canfora had been "deported nine months ago by the Italian consulate as a destitute. He has no relatives here who can support him, while at Naples he has brothers and sisters with means and can take good care of him." (The letter is set out in full 186 Fed., 355.) "Upon his arrival at Ellis Island he was detained, the usual proceedings for an investigation followed, and an order for his deportation was issued on the ground that he was liable to become a public charge."

Judge Holt, in his opinion, proceeds:

> "I consider if this order of deportation is carried out, it will be an act of cruel injustice. If this alien had remained in this country, he probably never would have been molested. If he had not lost his leg, he probably would not have been detained on his return. No offence is charged against him. It is proposed to deport him because he has suffered a pitiable

misfortune, and notwithstanding a proposition to give a satisfactory bond, which would appear to be a complete protection to the Government from becoming a public charge. But the immigration acts confer exclusive power upon the immigration officials to determine such questions, and the Courts so long as the procedure prescribed by the immigra- Acts and the rules established for their administration is substantially followed, *have under the decisions of the United States Supreme Court* no jurisdiction to interfere. I am, therefore, compelled to dismiss this writ. But I desire to express the hope that the immigration authorities will reconsider this case. I cannot believe that on a candid reconsideration of this record this man, who is charged with no offence, will be sent away, because he has suffered a grievous calamity *and has been denounced by a malicious enemy*, to pass his last years and to die in a distant land, far from his wife and children, and from his home in this country in which he has led a blameless life for so many years."

I find no decision of this Court compelling any such decision as Judge Holt's. Judge Holt does not cite any. He simply says: "The Courts held "that under such amendments the law applies to "all aliens whether they had previously entered "this country or not. *Taylor v. U. S.*, 152 Fed., 1; "*Exparte Hoffman* (*Matter of Lapina*, 179 Fed., "839)"—the case at bar. I have pointed out that that Taylor case was reversed by this Court,—and we hope to reverse Lapina case.

In that Canfora case, relator's counsel had improperly cited Rule 4 of the Regulations—which has nothing whatever to do with the subject discussed. That Rule 4 says that the Act does not apply to aliens who have once been admitted to United States, "passing back and forth between "the insular possessions and continental terri-

"tories of United States." It covers inter-domestic traffic and not inter-national traffic. Judge Holt inaccurately says "that Rule was adopted "under the earlier immigration Acts * * * it "has remained unchanged."

It was not adopted in the first Rules of Secretary Cortelyou approved August 26th, 1903,—the first under the 1903 Act. At any rate, it had never anything to do with the case. Judge Holt again said: "In 1903, Congress amended the Immigra- "tion Acts and substituted the term 'aliens' for "the term 'immigrants.'" As I have shown, supra, Congress did nothing of the sort as to exclusion sections,—nor did the "earlier immigration Acts," in the excluding sections, describe them as immigrants. We do not find that word "immigrants" occurring before Section 8 (listing) in 1891,—never in 1875, 1882, 1885, 1887 Acts, as before shown. The words used in the earlier Acts were "aliens," "alien," and "passengers." It is only used once in 1891 Act,—and not in excluding section.

The Canfora case, therefore, was decided on false a priori view of the law—by a Judge eminently wishing to do justice.

In that Canfora case the only distinction between it and case at bar is that Annie Lapina had already gone to the State of Arizona, and was under its sovereignty.

The growth of this species of executive power is remarkable,—because it is foreign to our theory of government. This is preeminently a court-governed land. This matter was by the Act of 1875 "subject to judicial process issued accord- "ing to law." Remedy was to "any proper Court "or Judge"—but gradually since then the executive powers have attempted to oust the Courts, and as President Madison so well pointed out:

"Power is of an encroaching nature, and it ought "to be effectually restrained from passing the "limits assigned to it."

That Act of 1903, with 1907 Act, has built up a hybrid tribunal which seems to have far more power than any Court of original jurisdiction in the United States,—issuing *letters de cachet* with as much abandon as any official issued them under Louis XIV of France. The history of the world had taught our predecessors that what was done in the past might be done in the future,—and they guarded against this by the Fifth Amendment: "No person shall * * * be deprived of life, "liberty or property without due process of law." The Fourteenth Amendment is: "Nor shall any "State deprive any person of life, liberty or "property without due process of law." So that if the Fourteenth Amendment is protective of an alien resident against State action, the Fifth Amendment is protective of an alient resident against Federal action;—for Mr. Justice Brewer said in *Wong Wing v. U. S.*, in 1896, 163 U. S., 228, "the term used in the 5th Amendment is "broad enough to include any and every human "being within the jurisdiction of the republic."

Here we have Judge Holt, a powerful Judge in a powerful Court, conceding to a minor executive department of the Government judicial power over an alien domiciliary resident—because of the ruling of the Court below in case at bar,—against his own convictions and inclinations as expressed in his forcible language quoted. Far different was the attitude of the Secretary of the Treasury on Oct. 26, 1882, under the Chinese Exclusion Act: "It will be understood, of course, that the decision "of this department is subject to be overruled by "the Courts." (Secretary Folger.)

This girl, Annie Lapina, was not a prostitute when she came here as a child. Whatever hap-

pened to her on that subject happened *here*. The laws of the State where she resided could have been invoked for her protection or for her punishment. The Federal laws have to do with her immigration into this country,—and that alone. Not yet has the United States usurped the police power of the several States over aliens who offend against States' laws.

If this be not so, situations might be created worthy of the comic opera of Gilbert & Sullivan. A State Court, or a United States Court, might give judgment for debt against an alien resident, but if defendant procured one of her friends to file a charge against her (as in the *Canfora* case, was done by an enemy) so that she could be deported, and so escape her debts, the litigant could never collect a cent from her. Deportation would then be her salvation—which is absurd. But instances are constantly arising where the superserviceable immigration inspectors endeavor to make use of deportation as an instrument of oppression. In the Federal Reporter advance sheets of April 18th, 1912, page 795 (193 Fed., 795) *U. S. ex rel. Reinmann v. Martin* occurs. There an alien woman obtained judgment in New York State for breach of promise of marriage against a United States citizen who induced her to accompany him to United States as his wife—he telling her that a marriage ceremony was unnecessary in this country. It was attempted to deport her on the theory that she was a concubine, and had obtained admission to this country by false statements as to her relationship to a citizen. But Judge Hazel sustained the writ, and discharged her,—notwithstanding that the Acting Secretary of Commerce and Labor, upon briefs submitted to him, had ordered her deportation.

For laborious toil and judicial ability the name of Judge Lacombe will ever be an inspiration to

the Bar. But, as the learned Judge said in addressing the Bar of New York City on February 17th, 1912 (N. Y. Law Journal, Feby. 18, 1912): "There is no longer time for a Federal Judge in "New York City to conduct exhaustive independ- "ent examinations of authorities and data. *More "help is needed from the Bar* if the questions are "intricate and prior decisions numerous and con- "flicting. Especially is this so if some statutory "question is concerned * * *. Unless the Judge "can depend upon counsel he may go astray in his "opinion, simply because he has not the time to "hunt the data independently for himself."

That eloquently explains how it happened that the true records of Congressional proceedings on the question at bar were not considered by the learned Court below. For the attorneys instructing present counsel, in the hurry of the moment had not the time nor the facilities to present such.

Senator Penrose in his speech introducing the Immigration Act of 1903 in the Senate closed his remarks by saying:

> "Who can feel assured that in a brief generation or two those triats of personal character,—the love of constitutional freedom—the willing obedience to *constituted* law and authority, the sturdy self-reliance, the veneration of the sanctities of our domestic, moral and religious institutions to which every battle-field of our country has been al altar of human sacrifice, upon which the stability of our existence as a free nation depends, may not become so *adulterated* that *those other traits, born of ages of oppression* and social and political heresy, may not predominate?" (Italics mine.)

That was ten years ago. Senator Penrose's warning was almost too late. For already vast multitudes from the regions "of ages of oppres-

"sion" had come to this country. And those very people—who came in under exceedingly loose laws and still looser procedure, both in admission and naturalization,—forgetting the blessings this country so freely and easily gave themselves,—have become greedy ultra-exclusionists and have attempted to "adulterate" the free laws of this country with their "social and political heresy" as Senator Penrose feared. Occasionally one finds those "other traits born of ages of oppres-"sion" temporarily getting the upper hand in this country—for those persons, with ideas totally foreign to the genius of this country, and dominated by those traits, grasp power—and sometimes place.

But as was so strongly pointed out by Mr. Justice Matthews in *Wick Wo v. Hopkins,* 118 U. S., 356, the 5th and 14th Amendments are sufficient to curb such as "administer public authority with an "evil eye and an unequal hand."

The great thing is for us lawyers to make sure that this country shall never have in our time a political atmosphere in which such oppressive "traits" can long live. If that be not done, then our fundamental principles of law and government will gradually atrophy and fade away;—and be lost—not in a tempest—nor in rough weather; but in an *oily,* calm, hazy sea of politics.

However satisfactory this sort of proceeding to deport Annie Lapina, may be to "the Department,"—however much it may "speed the cause" where the deportation of a poor, domiciled, originally deceived girl is concerned,—yet such loose procedure would not be tolerated in the smallest civil cause, in which was involved the ownership of a mere acre of Government land in the sands of Florida. The Cause is far greater than the petitioner,—for there never was a more arbitrary

proceeding—attempted right under the shadow of the Statue of Liberty, at Ellis Island,—than that to be reviewed by this Court in the case at bar.

ON ALL THESE GROUNDS IT IS CONTENDED THAT THE JUDGMENT OF THE CIRCUIT COURT OF APPEALS MUST BE REVERSED AND THE CAUSE REMANDED TO THE DISTRICT COURT, WITH INSTRUCTIONS TO DISCHARGE THE PETITIONER, ANNIE LAPINA.

Respectfully submitted,

WILLIAM HAWKINS,
Counsel for Petitioner.

APPENDIX.

Copy of Opinion of Attorney-General Griggs of May 8, 1899:

Department of Justice,
Washington, May 8, 1889.

The Secretary of the Treasury:

Sir: I have your letter of the 27th ultimo, asking, in effect, whether lists of immigrants should, under Section 1 of the act of March 3, 1893, be made before departure from a foreign country, or in accordance with the following order of November 14, 1898, now revoked:

> To Commissioners of Immigration, Collectors of Customs, and all other officers having authority to enforce United States Immigration Laws:
>
> It having been found that a literal compliance with the provisions of Section 1 of the act of March 3, 1893, would seriously and unnecessarily inconvenience immigrants coming to this country as cabin passengers you are hereby informed that if the manifests required by Department Circular No. 180, of October 8, 1898, are made out prior to the arrival of the steamship at your port and sworn to before a United States immigrant inspector or customs officer acting in that capacity upon arrival such manifests will be accepted as a sufficient compliance with the requirements of the law.

Respectfully yours,
T. V. Powderly,
Commissioner-General, F. H. L.

Approved:

O. L. Spaulding, Acting Secretary.

In my opinion, as the statute is explicit to the effect that the lists shall be "made at the time and place of embarkation of such alien immigrants on board," and as such provision cannot be said to be one which Congress may not be supposed to have regarded as of utility, it will not do to give much weight to consideration of inutility or inconvenience.

But while there seems to be no doubt that the lists of immigrants should be made out before departure, and, therefore, the order of November 14, 1898, which by reference to circular No. 180 embraces lists of "all such alien immigrants whether traveling first or second class or in the steerage" is erroneous; yet there remains a question.

An act of Congress should receive a reasonable construction, and one like this be so enforced as to produce as little injury and inconvenience to the traveling public and commerce as may be consistently with its terms and objects.

If, as I understand from your letter and its inclosures, it is both useless and inconvenient to put cabin passengers before sailing through the process as mentioned in Sections 1 and 2 of the act of 1893, it might well be argued that we are not giving a reasonable construction to that law and properly applying it when this is held to be within its meaning.

Congress itself has made a distinction (act of August 2, 1882) between "immigrant passengers or passengers other than cabin passengers," and "such cabin passengers.' The act of 1882 "to regulate the carriage of passengers by sea" contains elaborate provisions to secure the proper treatment and accommodation of "immigrant passengers" and passengers commonly known as steerage passengers in distinction from cabin passengers.

Within the meaning of statutes, therefore, not foreign to the subject of immigration, Congress has treated immigrants as persons different from cabin passengers, recognizing in that the notorious fact that immigrants are usually not cabin passengers.

But, as a matter of law, it must be said that immigrants, under the act of 1893, cannot be divided according to the parts of the vessel they occupy. The word immigrant undoubtedly embraces persons who may be and sometimes are in the cabins, and, while but few are there, a ruling to the effect that no cabin passengers are immigrants would probably increase the number. Neither do I feel assured that all owners of vessels would fail to alter their present charges and arrangements with a view to carrying in the cabins persons who do not now go into them.

The subject was one of difficulty for Congress, as it is in practice, and it is natural to suppose that had the division of immigrants from others by the simple separation into cabin and not cabin passengers been a safe and a practical one, Congress would have expressly adopted it in framing the act of 1893.

Not satisfied with inspections and other checks already provided for by law, Congress deemed it necessary to require those specified in that act, knowing, of course, that additional trouble would thereby be caused. We cannot nullify that law, nor have we any right to attempt it.

But Section 3 of the general immigration law of 1882 provides:

> "Sec. 3. That the Secretary of the Treasury shall establish such regulations and rules and issue from time to time such instructions not inconsistent with law as he shall deem best calculated to protect the United States and immigrants into the United States from

fraud and loss, and for carrying out the provisions of this act and the immigration laws of the United States; and he shall prescribe all forms of bonds, entries and other papers to be used under and in the enforcement of the various provisions of this act."

And Section 2 says:

"That the Secretary of the Treasury is hereby charged with the duty of executing the provisions of this act and with supervision over the business of immigration to the United States," etc.

And by these and other provisions of law it is made clear that Congress, aware of the practical impossibility of establishing in advance by inflexible orders of its own all the rules and methods that so indefinite and complex a business (entangled as it was, with that of carrying passengers), would demand, intended to vest in the Secretary power to make and apply such as would, from time to time, be shown by experience to be necessary and convenient.

It is from this authority of the Secretary that it seems not altogether impossible to obtain the desired relief, in part, if not wholly.

As I understand, the masters of vessels, as the only safe way of proceeding on their part, practically examine all the passengers. The act requires only the examination and listing of alien immigrants. In the absence of any certain and obvious means of knowing whether a person is or is not an alien immigrant, the phrase itself being to them of vague meaning, and having the responsibility of deciding placed upon them by the law, the masters naturally take that course, and thereby "delay, impede, or annoy passengers in ordinary travel." (Section 8, Act of March 3, 1891.)

They proceed on the assumption that everyone is an alien immigrant. But there is nothing in the act of Congress to indicate that everyone is

intended to be regarded as prima facie an alien immigrant and subjected to examination.

Congress requires a list of all "alien immigrants" and prescribes a penalty if one of them is omitted from the list, and while I am aware that from the prior legislation referred to there may be reason gathered for giving a very broad meaning to the word "immigrants," and for holding that the master must, at his peril, examine every alien on board and perhaps Americans, also, to prevent the omission of any alien immigrants from the list, yet I cannot regard it is consistent with the wisdom of Congress that a thing so unreasonable, so obstructive of passenger travel, so harrassing to vessels whose passengers come aboard shortly before the hour of departure, so annoying and distressing to persons traveling for pleasure, should be required under a penalty.

The nature of the examination, the listing in groups of thirty, the tickets for identification, the surgeon's examination, requiring, I presume, the removal of the clothes—all these things would seem to amount almost to a prohibition of ordinary traveling by foreigners in this country if every alien passenger must be subjected to them.

Such a prohibition was surely not intended. But, in my judgment the separation of those who should not be subjected to the examination and listing is a matter of practical administration intended to be regulated by you, Congress not desiring, on the one hand, that the entry of undesirable persons should thereby be given free scope, or, on the other hand, that ordinary passengers should be uselessly annoyed, and vessels (sometimes carrying mail) unreasonably delayed, in an effort to prevent the incoming of such persons.

This seems to be a matter in which the wisdom of your Department can properly be used to devise a system of instructions to inspectors and

other officers and corresponding circulars to masters, which will assure the latter that certain reasonable evidence, or a reasonable ground of presumption, that a person is not one required to be examined and listed, will be regarded by such officers and the Department as sufficient reason for not proceeding to enforce the penalty against such masters.

Such a system would not be at variance with the intent of Congress, but in furtherance of it. And it would be no objection to such a system that it was based on a presumption, supported by the oath of the master upon his best knowledge and belief, or other evidence, that the cabin passengers were not aliens immigrating—that is, aliens not already domiciled in this country, coming to make it their home—and were not excluded persons, if and so long as it might be found by experience and inspection that they were, in fact, in substantially all cases, not such persons.

Respectfully,

JOHN W. GRIGGS,
Attorney-General.

SUBJECT INDEX.

Cases Cited.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

ANNIE LAPINA, Petitioner, v. WILLIAM WILLIAMS, Commissioner of Immigration.	No. 7. On Writ of Certiorari to the U. S. Circuit Court of Appeals for the Second Circuit.

REPLY BRIEF FOR PETITIONER, FILED BY LEAVE OF COURT.

The Government's Brief Considered.

There is no constitutional question herein,—if the *facts* be attended to as to the provisions of the previous immigration laws of 1875, 1882, 1884, 1885, 1887, 1891,—nor even in reality any question of law.

After reading the Government's brief herein and Judge Lacombe's opinion in the Court below (sub. nom. *ex parte* Hoffman; R., 11),—which is the foundation for so much diversity of mere opinion,—where he says: "As the bill left the House it was broadly phrased; the Senate amended it in several particulars so as to restrict its operation to immi-

The Government's brief entirely and very studiously ignores it—it makes its Second Point by saying:

> "The elimination by Congress of the word 'immigrant' throughout the act was a positive indication of an intention to withdraw the restriction on the word 'alien' which its presence in the prior acts had been held by the Courts to imply."

Now, in regard to *exclusion*, the Courts never did hold any such thing—for the word "immigrant" was not there to qualify "alien." The previous acts had "alien." (Petitioner's Brief, p. 11). The word "immigrant" did *not* "permeate the acts"—as the Government contends at page 10 of its brief. The Act of 1891 only had "alien immigrant" in one solitary place and that was in Section 8 as to manifesting. (And petitioner did not wait for the Government to point that out—for it is shown at p. 11, Petitioner's Brief.) The Government attempts to prove this by showing that the word "migration" was largely used, but "migration" is a totally different word from "immigrant." Nor does it help the Government to show that the words "immigration of any alien" were sometimes used; when the exclusion section squarely says "alien" in the 1891 and previous acts. How then could the Act of 1903 have "struck out the basis of these decisions (Moffit, Pangaro, Martorelli, Maiola, etc.), by *excising* the word "immigrant?" Government's brief, p. 11.) Congress could not excise a word when it was never there to cut out! And what is the the use of saying "its plain "purpose was as stated in Taylor *v.* U. S. (207 "U. S., p. 126) was to widen the reach of 'the statute.'" (Govt's Brief, p. 11.)

It is dangerous to quote this learned Court's sentences in disconnected pieces. This Court

said (as pointed out at Petitioner's Brief, at p. 3):

> "No doubt that might have been intended "to widen the reach of the statute—*but we see "no reason* to suppose that the omission "meant to do more than to avoid the sugges- "tion that no one was within the act who "did not come here with intent to remain."

Which was exactly correct. For this learned Court grasped the situation in Congress. And at page 50 of petitioner's brief, Representative Shattuc, in charge of the 1902 bill (1903 Act), is quoted as saying:

> "Here stands a man who comes here an "alien immigrant. Here comes in a brother "of his who is *not* an alien immigrant, both "buying the same class of ticket. *One is an "alien immigrant because he tells the in- "spector he intends to become a citizen of "this country. His brother is not an alien "immigrant, because he tells the inspector he "does not intend to remain. The steamship "company pays the head tax for one only."*

And the Government would lose the $3—and the steamship company would make it, because the companies paid the head tax, and both tickets were sold at the same rates. And a powerful steamship influence had concocted this scheme to put in "alien immigrant" in the Senate. And Attorney General Griggs in 1898 had given an opinion also that alien passengers were not "alien immigrants," and did not have to answer certain questions (see Appendix, Petitioner's Brief). So that *new* thing "alien immigrants" in that 1902 bill would have helped the steamship companies immensely. But the House found it out —and explained the situation. (See Petitioner's Brief, pages 46 to 52 fully.)

Now, at page 13 of the Government's brief, the

same Representative Shattuc is quoted as to officers being hampered by *"restrictions of Court decisions on laws already existing."* And again at page 14, as to making "the administration of the law conform to judicial decisions by which existing law had been made inoperative." And the government's counsel says: "We have examined all the decisions under the former acts and these (Moffitt, Pangaro, Martorelli, Maiola, etc., set out at pages 10, 11) *are the only ones which could fall within the general terms used.*"

The Government's counsel appears to be innocent of any knowledge of those other disagreeable Court decisions mentioned by the same Mr. Campbell quoted by the Government at page 16 of its brief. We drew attention at pages 45, 46 of petitioner's brief, to the following:

> Mr. Campbell: "The term *alien immigrant* is *a modification of the existing law*—(he was referring to the Act of 1891)— * * * *The Courts have determined* that an alien immigrant is an alien who is coming here with a definite and distinct and avowed purpose of settling here. I take it that if this bill is passed in this shape, whatever may be its purpose in truth, every alien will profess that he is simply coming here for a visit, *in which case we could not collect a head tax of any sort on account of him.*"

Now, those were the Court decisions Mr. Shattuc and Mr. Campbell referred to,—those *custom house* decisions, and *not* those decisions on exclusion, like the *Moffitt* case and the others named at page 10 of Government's brief.

That *same* remark applies to the *same* Mr. Campbell's *same* complaint at page 16, Government's brief.

All those Court decisions arose on the custom house matters *alone*. And to anyone who remem-

bers those days of ocean travel, following the enactment of Section 1 of the Act of March 3, 1893, (in which the draftsman did a *new* thing, making every section apply to "alien immigrants"), the situation portrayed in Attorney General Grigg's opinion aforesaid will entirely elucidate what Mr. Campbell meant when he said: "The Courts rendered a number of contradictory opinions. The result was confusion and uncertainty. One officer administered the law in one way and another in another way." But that had nothing whatsoever to do with the subject of exclusion; it only had to do with conditions elucidated by Attorney General Griggs in his said opinion.

For, it is beyond question that the Act of 1891, with the word "alien," all through it, was generally held to be operative as to immigrants only—and not to apply to aliens actually resident in the United States, and who after a trip beyond the territorial limits thereof, return to resume their residence.

And that 1891 Act differs not from the 1903 and 1907 Acts—nor was it intended to be so. For let us look at what was said in Congress.

SENATOR CLAY (page 129, Cong. Rec., Vol. 36, Part 1):

> *"I have never understood that this bill intended in any of its features to refer to anything except alien immigrants"* (p. 39, Petitioner's Brief).

SENATOR LODGE:

> *"I will say that this bill, of course, is intended only to affect only immigrants"* (pp. 99 to 100 same volume).

SENATOR FAIRBANKS:

> *"What is there in this bill as it stands now that is not found in some form upon the*

statute books of to-day" (p. 2805, Vol. 36, Cong. Rec.)?

SENATOR PENROSE (in charge of the Bill in Senate):

"It is a codification of existing Treasury regulations and law."

See petitioner's brief, page 39.

REPRESENTATIVE SHATTUC (in charge of Bill in House), to the same effect (Petitioner's Brief, p. 37).

SENATOR GALLINGER, to the same effect.

If Congress meant any such radical departure as the Government now contends for, then these gentlemen never would have used such language.

I have shown, at page 36, petitioner's brief, that Representative Shattuc repeatedly said in Congress that the proposed law excludes "the following classes of *alien immigrants*"—and he was in charge of the Bill in the House.

It surely cannot be successfully contended—as the Government seems to hold—that Congress—which is one of the most intelligent bodies of gentlemen in this world—does not know how to use the English language to adequately describe its intentions. Senators Fairbanks, Lodge, Penrose, Gallinger, Clay and others, and Representative Shattuc, in charge of the House 1902 Bill, meant just what they said (see Petitioner's Brief, pp. 36-52).

And that is the whole history of why the *new* words "alien immigrant" were struck out of the 1902 Bill. There was never any debate on the excluding Section 2.

Surely, there never was at the bar of this Court a more glaring case of false ratiocination on false *a priori* grounds, than the Government's argument. And surely, the 6th Circuit in the Ault-

man case (148 Fed., 1022), and the 9th Circuit in the Nakashima case, 160 Fed., 842, and the Fifth Circuit in Redfern *v.* Halpert, 186 Fed., 151, are right—and the Circuits differing from them are wrong—on the point at bar.

At page 7 of Government's brief thirteen cases are cited against petitioner's contention. One of them is this very case in the Court below, *ex parte* Hoffman, 179 Fed., 839: "Among these opinions," says the Government, "the Court is particularly referred to the following as the most thorough and helpful: *Ex parte* Petterson, 166 Fed., 536; Taylor *v.* U. S., 152 Fed., 1; Frick *v.* Lewis, 195 Fed., 693."

The *Petterson* case was decided by Judge Purdy on the ground that the 1903 Act "omitted the word 'immigrant' *which* was *contained*" in the excluding section of 1891 Act. But we have shown that was not true (Petitioner's Brief, p. 31).

How can the *Petterson* case then any longer be said to be "thorough" or "helpful" herein?

The next "helpful" case is cited as the *Taylor* case, 152 Fed., 1. But that was reversed by this Court.

The next "helpful" case is the *Frick* case, 195 Fed., 693, and that was based on the same fallacy as the *Petterson* and *Hoffman* cases. The rest of the Government's cases are dominated by the same fallacy.

At page 5 of the Government's bill, it is contended that the decision of this Court in *Low Wah Suey* v. *Backus* (225 U. S., 476) "comes pretty near the point," and that "the reasoning seems to conclude this case." But that case was so decided solely on the ground that the American-born Chinaman's wife was not also American-born, and could not be naturalized.

Then the *Lem Moon Sing* case is relied on (158 U. S., 540). But that had already been dealt in

petitioner's brief at pages 23 and 59; and it is not in point, for petitioner is not claiming "by reason of her domicile *for purposes of business*" (presumably having *another* separate home).

And lastly the Government relies on *Bogajewitz v. Adams*, 228 U. S., 585, decided May, 1913. But that case was decided under the Act of 1910—whereas, this case is under the 1907 Act—and the petitioner is entitled to the benefit of three years' limitation thereunder.

Conclusion.

Throughout the Government's brief there is an apparent overlooking of the fact that as concurred in by the late Solicitor General (Hon. Lloyd W. Bowers) and as stated in the petition (*and by the Court below*, R., 11) "the single question presented is whether the provisions of the Immigration Act of 1907 apply to an alien, who after original entry into this country at the age of twelve years (R., 4 and 11) "had remained here uninterruptedly for more than three years, to wit: thirteen "years, and then after a six weeks' absence abroad "(R., 4) again seeks to enter the United States" (Mr. Justice Lacombe's Opinion, R., 11).

It is conceded that this alien resident left this country *animo revertendi* (R., 7).

And because "the lower Courts seem hopelessly "divided" on this *question*, the Solicitor General urged the issue of the certiorari herein.

The particular element of so-called misconduct, as petitioner's counsel always understood, was to be relegated to the background in this Court—and the "single question presented is (in the words of Judge Lacombe, R., 11) and the late Solicitor-General Bowers:

"Whether the provisions of the Act of 1907 "apply to an alien, who after original entry "into this country has remained here more "than three years, and then after a brief ab- "sence abroad *animo revertendi* again seeks "to enter the United States."

Petitioner's present counsel took up this case on that point alone. The Solicitor General gave his Concurring Memorandum on that point alone. Therefore, the persistent iteration of the word "prostitute" ("rambling prostitute") in the government's brief is needless and nauseating; and I feel deeply that it is highly unfair to petitioner's present counsel,—for at the very threshold of the discussion there is prejudice against petitioner.

The government's counsel has totally abandoned any attempt to refute petitioner's brief at page 39, et seq., where the chairman of the House Committee and the chairman of the Senate Committee on the Immigration 1903 Act disavowed emphatically the ideas imputed to them in the opinion of the Second Circuit in the *Taylor* case (152 Fed., 1).

At page 12 of the Government's Brief it is said: "The change was undoubtedly deliberate, "for the House having passed the bill without "the word 'immigrant,' the Senate *restored* it "*throughout*, but finally yielded in conference." Now, the Senate did NOT "restore it throughout"—for the words "alien immigrant" were *only* put in Section 1,—the head tax section,—and taken out at conference (see pages 45, 50, 51, Petitioner's Brief).

Then again the Government at page 9 of its brief talks about "the *elimination* by Congress "of the word 'immigrant' throughout the Act "was a positive indication of an intention to

"withdraw the restriction on the word 'alien' "which its presence in the prior acts had been "held by the Courts to convey." Now, this is inaccurate. For the word "immigrant" did *not* "permeate" the acts; and when the Government's counsel in a foot note tries to show it, he breaks down,—for he adduces "migration," as synonymous with "immigrant,"—which is radically absurd. The word "immigrant" in Section 8—of the *Manifesting* section—(not the Excluding Section 2)—of 1891 Act was shown in petitioner's brief two years before the Government ever attempted to meet petitioner's argument;—where petitioner also showed that the *first time* it was ever generally inserted was in the 1893 Act, which had nothing to do with exclusion.

I have shown, *supra*, that when the Government at page 16 of its brief inserts the observations of Mr. Campbell about "contradictory opinions" of Courts, Mr. Campbell but refers to decisions on Custom House subjects by the Courts. This is shown when quoting the same Mr. Campbell at page 46—Petitioner's Brief, last para. of page 46.

This learned Court was absolutely right in the *Taylor* case, 207 U. S., 120, as to what Congress intended,—for Congress intended to collect head tax from all "visiting aliens"; which the opinion of the Attorney General Griggs, *supra*, had advised the Government could not be done; because the draftsman of the 1893 Act had used the *new* term "Alien immigrant." Hence the head tax Section 1 of 1903 Act remained "passenger not a citizen of the United States." That was *all* the congressional conference debate was about. The 1903 Act stood the same, (on the use of the word "alien" in the exclu-

sion section) as did the 1891 Act, and all previous Acts.

I have surely demonstrated that Congress did not do, nor intend to do, what the Government now claims it intended to do in the 1903 and 1907 Immigration Acts (governing the case at bar). And that is "the single question presented" to this Court on certiorari—R. 11,—per Judge Lacombe and Sol.-Gen. Bowers' concurring memorandum.

The petitioner quit Russia and arrived in this country at 12 years of age (R. 10). There is surely here no sway for "retrospective presumption" (*Keller* case, 213 U. S., 139). She stayed here continuously. In 1902 she became of age,—and six years after that, in 1908, she sailed for Europe to bring her mother here,—which purpose she accomplished. That is conceded (R. 11). What misfortune happened to her sexually happened when she was under the police power of some State Government of the Union. Why should this country compel other countries to take its failures?

Erroneous contentions in these Deportation matters continue regularly to be put forward with a dreary pertinacity and an indifference to facts most discouraging. And these inadvised contentions are prolific in creating, with Baal-se-bublike fecundity, situations *capable of abuse*.

Finally, petitioner's counsel begs this great Court to remember that, after all, these Deportation Acts contain within them the germs of an unlimited and arbitrary power,—in general are

not altogether compatible with the immutable principles of Justice,—somewhat inconsistent with the very nature of our American theory of Government; and not at all in harmony, to be sure, with the written constitution by which *that* Government was created and those principles secured. And, therefore, these Deportation Acts should ever be jealously scrutinized.

It is very earnestly urged that the Government has entirely failed to meet the argument contained in petitioner's brief (filed in May, 1912), and that the judgment of the Circuit Court of Appeals, Second Circuit, must be reversed.

Respectfully submitted,

WILLIAM HAWKINS,
Counsel for Petitioner.

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TABLE OF CASES.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

ANNIE LAPINA, PETITIONER,
v.
WILLIAM WILLIAMS, COMMISSIONER OF IMMIGRATION. } No. 7.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR UNITED STATES.

STATEMENT OF CASE.

Petitioner, an unmarried alien woman, came to this country as a girl for the first time in 1897 or 1898, accompanied by a man named George, who had promised to marry her. During the four years immediately following her entry into this country she practiced prostitution in the city of New York, supporting the man George from her earnings. She then left New York and was continuously a prostitute in various cities throughout the United States until March, 1908, when she returned to Europe for the purpose of visiting her mother, intending at some time to

return to this country. She reentered the United States at the port of New York on June 2, 1908, accompanied by her mother, and, for the purpose of facilitating her landing, falsely represented that she was the wife of Joseph Fiore, an American citizen. Soon after her second entry she reengaged in the practice of prostitution and continued it until September 21, 1909, when she was arrested in a house of prostitution in Phoenix, Ariz., and after a fair hearing before the immigration authorities was ordered deported by the Secretary of Commerce and Labor. (R., 7, 10.)

The warrant of deportation (R., 8) recites that the said Annie Lapina, "alien, who landed at the port of New York, per S. S. *Finland*, on the 2d day of June, 1908, is in this country in violation of the act of Congress approved February 20, 1907, to wit: That the said alien is a prostitute and was such at the time of her entry into the United States; that she entered the United States for the purpose of prostitution; that she has been found practicing prostitution and an inmate of a house of prostitution subsequent to her entry;" and that "the period of three years after landing has not elapsed."

A writ of habeas corpus sued out for the discharge of petitioner was dismissed by the District Court, and its action was affirmed by the Circuit Court of Appeals. (R., 10.)

The case is here on a writ of certiorari, in the petition for which the Solicitor General concurred because of the division of judicial opinion on the question presented.

STATUTE INVOLVED.

The immigration act of February 20, 1907 (34 Stat., 898), provided (at the time concerned in this case):

> Sec. 2. That the following classes of *aliens* shall be excluded from admission into the United States: * * * *prostitutes*, or women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; * * *.
>
> Sec. 3. * * * *any alien* woman or girl who shall be found an inmate of a house of prostitution or practicing prostitution, *at any time within three years after she shall have entered the United States*, shall be deemed to be unlawfully within the United States and shall be deported as provided by sections twenty and twenty-one of this act.
>
> Sec. 20. That *any alien* who shall enter the United States in violation of law, * * * shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came *at any time within three years after the date of his entry into the United States.*
>
> Sec. 21. That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of this act or of any law of the United States, he shall cause such *alien within the period of three years after landing or entry therein* to be taken into custody and returned to the country whence he came, as provided by section twenty of this act, * * *.

QUESTION PRESENTED.

Since the making of the order of deportation in this case the act of March 26, 1910 (36 Stat., 263), was passed, amending the provision of section 3 of the act of February 20, 1907, as to the deportation of alien women or girls found inmates of a house of prostitution and practicing prostitution, by omitting the three-year limitation formerly contained therein. (*Bugajewitz* v. *Adams*, 228 U. S., 585.) An alien woman or girl found an inmate of a house of prostitution or practicing prostitution may now, therefore, be deported at any time after her entry.

But this deportation was ordered prior to this law and, while perhaps a new order might how be sustained under it notwithstanding the quasi-retroactive effect, the validity of the existing order depends upon the act of February 20, 1907. Nor, aside from this date of the order, is the question made essentially moot by the new act (even if retroactive), because it involves the broader question of the excluding section itself.

In order to bring her within the scope of those provisions it must be held that her second entry into the United States, on June 2, 1908, is to be taken as the date from which the three-year limitation prescribed by the act of February 20, 1907, began to run.

Do the facts shown by the record as to her former residence in this country take her out of the operation of the law?

FIRST POINT.

The word "alien" as used in the later immigration statutes does not mean "alien immigrant," but is intended to cover any "alien" entering the country, whether or not previously here.

Low Wah Suey v. *Backus* (225 U. S., 460, 472–476) comes pretty near the point. It held that the word "alien," in this very clause, included even the wife of an American citizen, and the reasoning seems to conclude this case.

Lem Moon Sing v. *U. S.* (158 U. S., 538) is even closer. The point decided was this: The act of August 18, 1894 (28 Stat., 390), now section 25 of the act involved in this case (34 Stat., 907), provided that where an "alien" is excluded from admission into the United States, the decision of certain administrative officers to this effect shall be final. A Chinese who resided in the United States but who was temporarily abroad *animo revertendi* at the time the statute was passed claimed that it was inapplicable to him, and that therefore an administrative decision denying him admission was reviewable by the courts. But the court held that he was an "alien" within the meaning of the statute, notwithstanding his domicile in this country, and that therefore the decision of the administrative officials was final and valid. The court said:

> The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced

exclusively through executive officers, without judicial intervention, is settled by our previous adjudications. Is a statute passed in execution of that power any less applicable to an alien who has acquired a commercial domicil within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to reenter it? We think not. The words of the statute are broad and include "every case" of an alien, at least every Chinese alien, who, at the time of its passage, is out of this country, no matter for what reason, and seeks to come back. He is none the less an alien because of his having a commercial domicil in this country. While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property, secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here during his absence are as fully protected by the supreme law of the land as if he were a native or naturalised citizen of the United States. But when he has voluntarily gone from the country, and is beyond its jurisdiction, being an alien, he can not reenter the United States in violation of the will of the Government as expressed in enactments of the lawmaking power.

Thus, the court refused, as to another section of this very statute, to imply in the word "alien" the very restriction which it is invited to imply here.

This case was so interpreted by the Court of Appeals for the Sixth Circuit in *Frick* v. *Lewis* (195 Fed., 693, at 697).

Taylor v. *U. S.* (207 U. S., 120, 126, *infra*) has a dictum in our favor (quoted *infra*). The case itself held that permitting a seaman to go ashore on shore leave was not permitting an unlawful "landing," or "bringing" him to the United States, contrary to section 18 of the act of 1903.

The following decisions of the lower courts support our position:

Ex parte Hoffman, 179 Fed., 839 (1910), Circuit Court of Appeals, Second Cir.

Taylor v. *U. S.*, 152 Fed., 1 (C. C. A., 2d Cir.).[1]

Sibray v. *United States*, 185 Fed., 401 (1911), Circuit Court of Appeals, Third Cir.

United States v. *Sprung*, 187 Fed., 903 (1910), Circuit Court of Appeals, Fourth Cir.

Frick v. *Lewis*, 195 Fed., 693 (1912), *supra*, Circuit Court of Appeals, Sixth Cir.

Sinischalchi v. *Thomas*, 195 Fed., 701, 704 (1912), Circuit Court of Appeals, Sixth Cir.

Prentis v. *Stathakos*, 192 Fed., 469, 471 (1911), Circuit Court of Appeals, Seventh Cir.

In re Kleibs, 128 Fed., 656 (1904), C. C., So. D. of New York.

United States ex rel. Funaro v. *Watchorn*, 164 Fed., 152 (1908), C. C., So. D. of New York.

Ex parte Crawford, 165 Fed., 830 (1908), D. C., So. D. of New York.

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[1] Reversed by this court, *U. S.* v. *Taylor*, *supra*, but on a different ground.

Ex parte Petterson, 166 Fed., 536 (1908), D. C., D. of Minnesota.

White v. *Hook*, 166 Fed., 1007 (1908), D. C., D. of Maryland.

United States v. *Villet*, 173 Fed., 500 (1909), C. C., So. D. of New York.

Among these opinions, the court is particularly referred to the following, which are the most thorough and helpful:

Ex parte Petterson, 166 Fed., 536 (Purdy, D. J.).

Taylor v. *U. S.*, 152 Fed., 1 (C. C. A. 2 C.).

Frick v. *Lewis*, 195 Fed., 693 (C. C. A. 6 C.).

The Court of Appeals for the Sixth Circuit seems perhaps to have held *contra* in *Aultman* v. *U. S.* (148 Fed., 1022), affirming without opinion 143 Fed., 922; but if so, it has overruled the proposition in *Frick* v. *Lewis*, *supra*, and *Sinischalchi* v. *Thomas*, *supra*, which are squarely in our favor.

The Court of Appeals for the Third Circuit held *contra*, *on the general proposition*, in *Rodgers* v. *U. S. ex rel. Bucksbaum*, 152 Fed., 340 (1907), affirming 141 Fed., 221, and in *U. S. ex rel. Barlin* v. *Rodgers*, 191 Fed., 970 (1911), but declined to apply the rule to a case such as this, where the alien had not acquired a real domicile in the United States. (*Sibray* v. *U. S.*, *supra*.)

Directly *contra*, and thus far not overruled are:

U. S. v. *Nakashima*, 160 Fed., 842 (1908, C. C. A., 9th C.).

Redfern v. *Halpert*, 186 Fed., 150 (1911, C. C. A., 5 C.).

First. Neither in the section itself nor elsewhere does the act place any restriction on the word "alien."

The section is quoted above. It does not say "alien nonresident," nor even "alien immigrant," but "alien" without restriction.

And throughout the act, as we more particularly show in the next point, the word is "alien" and not "alien nonresident" or "alien immigrant," so that no such restriction is to be drawn in by implication from the context.

The title does say "immigration," but that is a survival and not significant. (*Taylor* v. *U. S.*, 207 U. S., at p. 126, *supra*.)

So as the court pointed out in the *Low Wah Suey* case, *supra* (225 U. S., at p. 473), "the statute in terms applies in general to all aliens," and as an alien is "one born out of the jurisdiction of the United States, and who has not been naturalized under their Constitutions and laws" (2 Kent, 50; 1 Bouvier's Law Dictionary, 129, quoted in the *Low Wah Suey* case at the page cited), this petitioner, like *Low Wah Suey*, is within it, and some basis must be found for an implication forcing her out.

Second. The elimination by Congress of the word "immigrant" throughout the act was a positive indication of an intention to withdraw the restriction on the word "alien" which its presence in the prior acts had been held by the courts to imply.

Under the acts prior to that of 1903 (30 Stat., 1213) the word "alien" in the excluding section, though itself unrestricted by the word "immigrant,"

was uniformly held to be so restricted by implication from the presence of the latter word permeating the acts, and so, inapplicable to resident aliens.[1]

Moffitt v. *U. S.*, 128 Fed., 375 (1904; C. C. A. 9 C.).

In re Panzara, 51 Fed., 275 (1892), D. C., E. D. New York.

In re Martorelli, 63 Fed., 437 (1894), C. C. So. D. New York.

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[1] The act of March 3, 1875 (18 Stat., 477), entitled "An act supplementary to the acts in relation to immigration," provided (sec. 5) "that it shall be unlawful for aliens of the following classes to *immigrate* into the United States."

The act of February 26, 1885 (23 Stat., 332), entitled "An act to prohibit the importation and *migration* of foreigners and aliens under contract or agreement to perform labor in the United States," etc., referred to the migration or importation of persons under contract to labor. Section 3 penalized the acts of assisting, encouraging, or soliciting the *migration* or importation of any alien or aliens, foreigner or foreigners, to perform labor or service of any kind under contract or agreement "with such alien or aliens, foreigner or foreigners, *previous to becoming residents or citizens of the United States.*" To the same effect are the acts amendatory to this contract-labor act, approved February 23, 1887 (22 Stat., 332), and October 19, 1888 (25 Stat., 561), the last-named act conferring authority upon the Secretary of the Treasury to expel any such alien contract laborer, and using the word "immigrant" to describe such deportable person.

The act of March 3, 1891 (26 Stat., 1084), entitled "An act in amendment of the various acts relative to the immigration and the importation of aliens under contract or agreement to perform labor," provided (sec. 1) for the exclusion from admission of certain classes of "*aliens*"—idiots, insane persons, paupers or persons likely to become a public charge, persons suffering from a loathsome or a dangerous contagious disease, etc.; prohibited (sec. 3) the assisting or

In re Maiola, 67 Fed., 114 (1895), C. C., So. D. New York.

In re Ota, 96 Fed., 487 (1899), D. C., N. D. Cal.

23 Ops. A. G., 278.

The act of 1903, however, struck out the basis of these decisions by excising the word "immigrant," * and its plain purpose was, as stated in *Taylor* v. *U. S.* (207 U. S., p. 126, *supra*), to "widen the reach

encouraging of the "*importation* or *migration*" of any *alien* by promise of employment through advertisements;" and (sec. 4) the soliciting, etc., by transportation companies of the "*immigration* of any *alien* into the United States;" penalized (sec. 6) the bringing into the United States of "any alien not lawfully entitled to enter;" required (sec. 8) that "upon the arrival by water at any place within the United States of any *alien immigrants*" it should be the duty of steamship officials to report certain facts regarding every such alien to the Government inspection officers, whereupon the officers should "inspect all such aliens," and that the steamship officials should adopt due precautions to prevent the landing of any alien *immigrant*," and penalized allowing "any *alien immigrant* to land otherwise than in the specified manner; provided (sec. 10) for the return by the vessel bringing them of "*all aliens* who may unlawfully come into the United States," and penalized the steamship companies for a refusal to receive "*such aliens*" back on board; and provided (sec. 11) for the deportation, "as provided by law," of "*any alien* who shall come into the United States in violation of law," and for the deportation "as aforesaid" of "*any alien*" who might become a public charge within one year after entry.

The act of March 3, 1893 (27 Stat., 569), entitled "An act to facilitate the enforcement of the immigration and contract-labor laws of the United States," used throughout the term "*immigrants*" or "*alien immigrants*."

* The act struck it out everywhere except from the contract laborer sections (3–7) and from the title.

of the statute." What the court there said was this (p. 126):

> A reason for the construction adopted below was found in the omission of the word "immigrant" which had followed "alien" in the earlier acts. No doubt that may have been intended to widen the reach of the statute, but we see no reason to suppose that the omission meant to do more than to avoid the suggestion that no one was within the act who did not come here with intent to remain. It is not necessary to regard the change as a mere abbreviation, although the title of the statute is "An act to regulate the immigration of aliens into the United States."

This passage is quoted by counsel for petitioner as tending to support him, but the phrase he relies on was plainly addressed to the point raised in the *Taylor* case, namely, whether the change brought into the field of the act sailor's landing on shore leave and not to "remain."

The nature of the change and its history is fully reviewed in the opinion of the court below in this *Taylor* case. (152 Fed., 1, 5, *supra*.)

The change was undoubtedly deliberate, for the House having passed the bill without the word "immigrant," the Senate restored it throughout, but finally yielded in conference. (Cong. Rec., v. 36, p. 2949, 57th Cong., 2d sess.)

The reports of the committees, both in the Senate and the House, indicate the intention to meet the early cases we have cited.

The report of Senate committee said (S. Rept. 2119, 57th Cong., 1st sess.):

> *With the exception of certain features, which will be referred to further on in this report,* this measure is a reenactment of existing laws upon the subject of immigration. The necessity for such reenactment is due in part to the fact that, *as a result of judicial decisions* as well as of administrative experience, the efficiency of such laws to accomplish the evident purpose of their enactment has been shown to be materially less than appeared to be the case at the time of such enactment, and therefore a *new expression of the legislative will* upon the subject of immigration has become desirable.

The report of the House committee is similar (H. Rept. 382, 57th Cong., 1st sess.):

> To amend such portions thereof as have been found, either as the result of experience in administering the law *or of judicial decision*, to be inadequate to accomplish the purpose plainly intended thereby, and to add thereto such further provisions as seemed to be demanded. * * *

In a statement before the Immigration Committee of the Senate, Representative Shattuc, chairman of the Committee on Immigration of the House, said (S. Doc. 62, p. 197, 57th Cong., 2d sess.):

> The work of officers having charge of the enforcement of the law was hampered * * * by the *restrictions of court decisions on laws* already existing * * *.
>
> The House bill as reported, therefore, may be said to have been framed with three things in view:

First. To include all parts of existing laws which experience had proved effective or, which is of equal importance, had received the sanction of judicial interpretation.

Second. To insert such changes as were necessary to make the administration of the law *conform to judicial decisions by which existing law had been made inoperative.*

Third. To add such new provisions of law as were necessary to meet new or changed conditions and bring within the purview of the public statutes certain features now only partially reached through decisions of the Treasury Department officials.

To be sure these reports and this statement do not explicitly mention these particular decisions, but we have examined all the decisions under the former acts and these are the only ones which could fall within the general terms used. Also the testimony submitted with the reports show that this was the point.

At page 195, for instance, of the Senate document just referred to appears the following:

Mr. ANDERSON (representing steamship companies). Will you excuse me a moment? I want to answer another point now, because I do not want to get up again. It is in regard to the manifesting of cabin passengers. The manifesting of cabin passengers and the rules under which the Treasury Department is advised that they may mitigate that requirement, as far as first-cabin passengers are concerned, so that they shall not have to answer all those questions, are made by the Attorney General on the fact that the word "immigrant" is used, and that there is a distinction between

cabin passengers and immigrant passengers, who usually occupy the third class.

Now, in this new bill the word "immigrant" has been eliminated, and it says all cabin-passengers must answer—not one question, not other questions, not a sufficient number of questions to satisfy you that they are not objectionable aliens, but every question that is asked a steerage passenger * * *.

Representative SHATTUC. Mr. Anderson, you suggest we have not used the word "immigrant" in the bill. Do you know the definition of an immigrant?

Mr. ANDERSON. I only know that the Attorney General in his opinion has given it a different definition from the word "alien."

Representative SHATTUC. What would you give as the definition of the word "immigrant"?

Mr. ANDERSON. An immigrant is, in my opinion, one who comes here to settle; and I do not say it is not perfectly proper, as a general thing, to eliminate "immigrant" from the law. I am not telling you what you shall do or what you shall not do, but I am trying to point out to you some evils that are likely to occur, so that in your wisdom you may provide for them.

Representative SHATTUC. Let me point out one evil that would occur if we should adopt your suggestion and say "immigrant." "Immigrant" means, according to the law books and the dictionaries and everything else, a person coming to this country to settle permanently; *so if we used that word our laws would apply to nobody except those coming to settle here permanently.*

And again, on page 212:

> Mr. LITCHMAN. Do you not regard it as imperative that the bill—that is, substantially the bill—should be passed at this session of Congress?
>
> Mr. CAMPBELL. Unquestionably. There are many defects in the existing law that result in the defeat of its obvious purposes. That point was raised here a while ago, I think probably by Mr. Anderson, with respect to the term "alien immigrant." That matter was the source of endless embarrassment before Congress took it out of the hands of the courts [i. e., by the act of 1894, p. 5, *supra*] and placed it in the hands of the administrative department. Before the final decision as to the right of any alien to enter the United States *the courts rendered a number of contradictory opinions as to what kind of persons the law applied to, as to what an alien immigrant was. The result was confusion and uncertainty. One officer administered the law in one way and another in another way.*

The act of 1907 follows the act of 1903 so far as concerns this case.[1]

[1] Section 1 of this act of 1907 (34 Stat., 898) imposes a head tax of $4 "for every alien entering the United States," this being a change from the act of 1903, which, following the original act, imposed the tax for "each and every passenger not a citizen." Certain exceptions from the head tax are expressly provided, among others, that it shall not be imposed "upon aliens in transit through the United States, nor upon aliens who have been lawfully admitted to the United States and who later shall go in transit from one part of the United States to another foreign contiguous territory."

Section 2 provides that the "following classes of aliens shall be excluded from admission into the United States,"

Third. The administrative construction supports the construction given by the court below.

Counsel for petitioner claims (Brief, p. 53) that the present contention was not recognized by the

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and names, among others, prostitutes and "persons hereinafter called contract laborers who have been induced or solicited to *migrate* to this country," etc.

Section 3 deals with the importation into the United States of *aliens* for the purposes of prostitution, and provides that "*any alien* who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States," shall be subject to deportation.

Sections 4, 5, 6, and 7 relate to alien contract laborers, and here, as in the provisions of section 2 relating to this particular class of aliens, the word "*migration*" is used.

Section 9 prohibits the bringing to the United States of "*any alien*" subject to the following disabilities: Idiots, imbeciles, epileptics, or persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease"; and sections 10 and 11 contain provisions as to examination and exclusion of this class of aliens.

Section 12 provides for the manifesting of *any alien* arriving by water at any port of the United States, part of the information to be stated being "*whether ever before in the United States; and if so, when and where.*"

Section 13 provides for the listing of "*all aliens*" arriving by water at the ports of the United States.

And so on through the act the word "*alien*" is used without qualification, except that in section 25, providing for the appointment of a board of special inquiry, the term "immigrants" is employed. It will be observed, however, that in the similar provision in section 25 of the act of March 3, 1903, the word "aliens" was used, and in view of the fact that the act of 1907 follows the act of 1903 in the employment of the term "aliens" in every respect but this, the use of the word "immigrants" in section 25 of the latter act was manifestly a clerical error.

Department of Commerce and Labor until long after the passage of the act of 1907.

This is plainly a mistake, for if the administrative officers of the department had not taken the position that the law applied to *all aliens*, it is obvious that the cases which made possible the decisions hereinbefore cited, both those supporting and those overruling the administrative action, *would not have arisen*.

That the contract labor provisions were so applied by administrative officers is shown by the case of *United States* v. *Aultman* (143 Fed., 922); that the excluding provisions of section 2 were, is shown by the *Buchsbaum* (141 Fed., 221; 152 Fed., 256), the *Nakashima* (160 Fed., 842), and the *Taylor* (152 Fed., 1) cases; and that the provisions of section 10, denying an appeal in certain kinds of cases, were is shown by the *Nakashima* decision.

It is true, of course, that the administrative officers have followed the decisions rendered by the courts of appeals in the adverse circuits; but such action was no indication that they concurred in the views of those courts. A report regarding the admission in the fiscal year 1908 of fourteen aliens of the domiciled class was made to Congress in 1909 (H. R. Doc. 1494, 60th Cong., 2d sess), but likewise only in deference to the above decisions.

The amount of litigation shows how strongly the department has contended from the first for the other view.

Fourth. The policy of the act is against the restoration, by construction, of the restricting words.

Surely if the general scope of the word "alien" can not yield by construction to exclude the wife of a citizen of the United States (*Low Wah Suey* v. *Backus*, 225 U. S., 460, 473, *supra*), it is impossible to see any basis for the implication sought to be made here, and which was rejected in *Lem Moon Sing* v. *U. S.*, 158 U. S. 540, *supra*.

The policy of these exluding sections is far from requiring the exception.

The reasons for the exclusion are (1) to protect our population from injuries due to contagion and crime and (2) to avoid the expense of supporting the unfit.

As to both of these matters, we accept, of course, the obligations of dealing with our own afflictions, because internationally they are ours; but those which belong to other nations Congress has declined to accept. And the normal meaning of the broad word "alien" tallies with this distinction, for until we have conferred citizenship we have not assumed the responsibilities. (*Low Wah Suey case*, 225 U. S., p. 473, *supra*.)

Hardship to the alien who has established interests here is the supposed ground for encroaching on this general proposition; but those hardships are merely incident to the failure of the alien to make himself a citizen and to assume the obligations of citizenship.

In the present case there is also urged an idea of estoppel, but obviously the Government never granted the petitioner any license. At most she had merely escaped discovery in her prior adventures.

SECOND POINT.

If a restriction on the word "alien" is to be implied, it should cover persons bona fide domiciled and not this petitioner.

The Court of Appeals for the Third Circuit, in *U. S. ex. rel. Barlin* v. *Rodgers* (191 Fed., 971, 978, *supra*) held that the exception implied from the scope of the word "alien" covered *bona fide* domiciled persons but not rambling prostitutes like the petitioner. (See the facts as to her lack of domicile and settled "interests" in Tr. Rec., fol. 11.) And some of the cases which go our whole distance take this as a second ground. (E. g., *Ex parte Petterson*, 166 Fed., 536, *supra*.)

To be sure this accords with the reason of "hardship" and "estoppel" from which the rule is sought to be implied, but it illustrates the arbitrary and legislative character of the exception. There appears to be no special reason for supposing that Congress intended to have a line implied at this particular place rather than another.

CONCLUSION.

The judgment should be affirmed.

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